CASE AND COMMENT

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Legal Aspect of Municipal Aesthetics

BY ROBERT A. EDGAR

Of the New York Bar

THERE is probably no one test by which the degree of culture and refinement of the inhabitants of a city may be better determined than the beauty and attractiveness of the city itself. For it is but the outward manifestation of inward grace. The improvement in the physical appearance of a city may be brought about either by the citizens in their individual capacity, or by the city in its corporate capacity. It is the purpose of this article to discuss the legal aspect of some of the ways in which a city in its corporate capacity may seek to minister to the æsthetic needs of its citizens. And in so doing a few cases will be cited in which municipal corporations were not directly concerned, but which seem to involve analogous principles.

Beauty has a material and financial value as well as an æsthetic one, as every mountain and seaside resort testifies. In Europe, art, as a matter of state or municipal concern, is under the fostering care of the government to a much greater extent than here, and to a much greater extent than is possible here, hampered as we are by constitutional restrictions. The natural beauty of some of these countries, their antiquities and works of art, are regarded, even from a material point of view, on account of the number of tourists they attract, as most important assets, and are sedulously protected. In Germany, laws have been passed forbidding the defacing of certain scenes of natural beauty by disfiguring advertisements. In Italy, the exportation of certain antiquities and works of art has been forbidden by law. On account of this law, J. Pierpont Morgan voluntarily returned to Italy the celebrated Ascoli Cope, which he had purchased, on learning that it had been stolen and removed from Italy in violation of the law.

An interesting recent case on the value of natural beauty is that of Cascade Town Co. v. Empire Water & Power Co.[1] In that case it appeared that a business corporation had started a resort for tourists along the banks of a stream which ran through a rocky gorge or pass in Colorado, and was broken by numerous high, abrupt falls from which mist and spray arose, causing luxurious vegetation and attracting many tourists by its beauty. The corporation also made a lake and fountain, platted a town site, and sold lots in the neighborhood of the falls for summer homes. Another corporation sought to divert the waters of the stream for use in generating electricity to sell as a commodity. It was held that they would be enjoined from doing so, on the ground that the water was already being devoted to "beneficial uses" within the meaning of the Colorado Constitution. The court,

[1] 181 Fed. 1011.

Illustrating Article on German Municipalities by Hon. Frank K. Mott. See page 385.

adopting as its own the language of the solicitor for the complainant in his brief, said:

"Rest and recreation is a beneficial use, and for that purpose water is used to make beautiful lawns, shady avenues, attractive homes, and public parks with fountains, lakelets, and streams, and artificial scenic beauty.

"Cities condemn water, and use water for the foregoing purposes. No one questions but that public health, rest, and recreation is a domestic use, as well as a beneficial use. No one, we may add, questions the right to these uses.

"The law inside of a city is not different from the law outside of the city. In one sense there is no commercial value to fountains and parks; they do not bring in a revenue, but they are vastly beneficial to the public health, rest, and recreation, and such fact is recognized the world over, and there can be no question but that water, applied to their maintenance and creation, is a 'beneficial use.'

"We say that the creation of a summer resort is a beneficial use. Is it no benefit to the public to spend money in making a beautiful place in nature visible and enjoyable? Is it not in line with public health, rest, and recreation? If a person takes a stream, and, after putting in waterfalls, ponds, bridges, walls, shrubbery, and blue-grass sod, works it into a beautiful home, that is a beneficial use. It is a benefit to the weary, ailing, and feeble that they can have the wild beauties of nature placed at their convenient disposal. Is a piece of canvas valuable only for a tent-fly, but worthless as a painting? Is a block of stone beneficially used when put into the walls of a dam, and not beneficially used when carved into a piece of statuary? Is the test dollars, or has beauty of scenery, rest, recreation, health, enjoyment, something to do with it? Is there no beneficial use except that which is purely commercial?"

Parks and Boulevards.

There is no one feature of city life which more greatly adds to its beauty and attractiveness than a well-ordered park and boulevard system. Yet it has been said that Central Park, of New York, was the first place deliberately provided for the inhabitants of any city or town in the United States for exclusive use as a pleasure ground for rest and exercise in the open air.[2] Before that, in many of the older cities and towns, there were commons or public grounds; but the purpose of these was not to furnish places for exercise and recreation, but places on which the owners of domestic animals might pasture them in common, and they were generally laid out as part of the original plan of the town or city. Yet there is now hardly a city of any size in the country wholly devoid of parks.

Parks have not only an æsthetic and health value, but also a material financial value, and the latter is largely the result of the former. It has been the experience of cities that those having the most highly developed park systems are the most prosperous, since they attract and hold the most desirable class of laborers and artisans. It is well settled that providing for public parks and boulevards is a public purpose for which public money may be expended.[3] In Com. v. Boston Advertising Co.[4], the supreme court of Massachusetts said:

"We agree that the promotion of the pleasure of the people is a public purpose, for which public money may be used and taxes laid, even if the pleasure is secured merely by delighting one of the senses."

And not only may public money be expended in their purchase and support, but the land of individuals may be condemned by the exercise of eminent domain to obtain land to form them, upon payment of compensation.[5] Lands of an individual cannot, however, be taken, directly or indirectly, for parks or boulevards, without compensation. Thus, it has been held that an ordinance declaring a portion of an avenue to be a boulevard, and forbidding the use of the houses for anything but residences, is

[2] Shoemaker v. United States, 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361, citing Johnson's Cyclopædia as authority.

[3] Shoemaker v. United States, 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361; Wilson v. Lambert, 168 U. S. 611, 42 L. ed. 599, 18 Sup. Ct. Rep. 217; Com. v. Boston Advertising Co. 188 Mass. 348, 69 L.R.A. 817, 108 Am. St. Rep. 494, 74 N. E. 601; County Court v. Griswold, 58 Mo. 175; Re New York, 99 N. Y. 569, 2 N. E. 642; Re Clinton Ave. 57 App. Div. 166, 68 N. Y. Supp. 196.

[4] 188 Mass. 348, 108 Am. St. Rep. 494, 74 N. E. 601, 69 L.R.A. 817.

[5] Shoemaker v. United States, 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361; Wilson v. Lambert, 168 U. S. 611, 42 L. ed. 599, 18 Sup. Ct. Rep. 217; United States v. Cooper, 9 Mackey, 104; People ex rel. South Park v. Williams, 51 Ill. 57; Atty-Gen. v. Williams (Knowlton v. Williams) 174 Mass. 476, 47 L.R.A. 314, 55 N. E. 77, affirmed 188 U. S. 491, 47 L. ed. 559, 23 Sup. Ct. Rep. 440; County Court v. Griswold, 58 Mo. 175; Re Rochester, 137 N. Y. 243, 33 N. E. 320; Re Central Park,

an unconstitutional invasion of the right of private ownership of property.[6] So, also, a city in order to make a boulevard, cannot, without compensation to the landowner, establish a building line several feet from the street to which all structures must conform, as this is a "taking" within the meaning of the Constitution.[7] And in Quintini v. Bay St. Louis,[8] it was held by the supreme court of Mississippi that the legislature has no authority to authorize a municipality to declare a building a nuisance erected by a man on his own property, merely because it intercepts the view of a bay from a beautiful driveway skirting its waters, although the municipality was a famous summer resort and its real estate derived much of its value from its commanding view of the waters of the bay. The right of the municipality to condemn the land, however, was not before the court, nor considered. But the conversion of a public highway into a pleasure driveway or boulevard from which loaded vehicles are excluded has been held, in a state where the fee of the highway is in the public, not to deprive citizens doing business on other streets and desirous of transporting loads over it, of their property without due process of law, nor to take their private property for public use without compensation.[9]

Although the city, as a whole, is benefited by parks and boulevards, yet the land in their immediate neighborhood is especially benefited and enhanced in value. But, as was said by Mr. Justice Shiras in Shoemaker v. United States:[10]

"In the memory of men now living a proposition to take private property without the consent of its owner for a public park, and to assess a proportionate part of the cost upon real estate benefited thereby, would have been regarded as a novel exercise of legislative power."

It is now, however, quite well settled that not only may public moneys be expended on public parks and boulevards, but that a portion of the necessary cost may be assessed upon the land in the immediate vicinity of the parks and boulevards and specially benefited, in proportion to the benefits received.[11]

Public money may be spent not only in establishing a park, but also in beautifying and embellishing it, both by improving its natural beauty and by the erection of statuary and other works of art.[12]

The United States has the same right to establish a park in the District of Columbia and to condemn land for that purpose that a state has in a city within its own bounds.[13]

In the case of the Gettysburg Park,[14] the Supreme Court went a step further and held that the United States might establish a national park on a great battlefield and condemn land for such a purpose, though within the bounds of a state. This ruling was placed on the ground that the instilling of patriotism was a national object and hence a public use. In answer to the objection that no clause of the Constitution gave such power, the court said:

"No narrow view of the character of this proposed use should be taken. Its national character and importance, we think, are plain. The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of those powers may be grouped

63 Barb. 282; Re Clinton Ave. 57 App. Div. 166, 68 N. Y. Supp. 196.

[6] St. Louis v. Dorr, 145 Mo. 466, 68 Am. St. Rep. 575, 41 S. W. 1094, 46 S. W. 976, 42 L.R.A. 686.

[7] St. Louis v. Hill, 116 Mo. 527, 22 S. W. 861, 21 L.R.A. 226.

[8] 64 Miss. 483, 60 Am. Rep. 62, 1 So. 625.

[9] Cicero Lumber Co. v. Cicero, 176 Ill. 9, 68 Am. St. Rep. 155, 51 N. E. 758, 42 L.R.A. 696.

[10] 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361.

[11] Shoemaker v. United States, 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361; Wilson v. Lambert, 168 U. S. 611, 42 L. ed. 599, 18 Sup. Ct. Rep. 217; Holt v. Somerville, 127 Mass. 408; Briggs v. Whitney, 159 Mass. 97, 34 N. E. 179; State ex rel. St. Paul v. District Ct. 75 Minn. 292, 77 N. W. 968; Kansas City v. Ward, 134 Mo. 172, 35 S. W. 600; Kansas City v. Bacon, 147 Mo. 259, 48 S. W. 860; Owners of Ground v. Albany, 15 Wend. 374; Re Central Park, 63 Barb. 282; Re Beechwood Ave. 194 Pa. 86, 45 Atl. 127.

[12] Atty-Gen. v. Williams (Knowlton v. Williams) 174 Mass. 476, 55 N. E. 77, 47 L.R.A. 314, affirmed in 188 U. S. 491, 47 L. ed. 559, 23 Sup. Ct. Rep. 440.

[13] Shoemaker v. United States, 147 U. S. 282, 37 L. ed. 170, 13 Sup. Ct. Rep. 361; United States v. Cooper, 9 Mackey, 104.

[14] United States v. Gettysburg Electric R. Co. 160 U. S. 668, 40 L. ed. 576, 16 Sup. Ct. Rep. 427.

together, and an inference from them all may be drawn that the power claimed has been conferred."

The United States has also, without its right to do so being challenged, established national parks within the bounds of states, out of portions of its own national domain, for reasons almost wholly æsthetic. But it has not as yet attempted to acquire land for that purpose by the exercise of the power of eminent domain, though it had been urged to do so to preserve the natural beauty of the Palisades of the Hudson, which had been threatened with spoliation for commercial purposes. The distinction, however, between establishing a national park for patriotic reasons, as in the case of the Gettysburg Park, and for æsthetic reasons, is not great, and it may be that in the future that further advance will be made.

Billboards and Signs.

A municipality may absolutely prohibit signs and billboards from being placed on the public streets, or on any of its parks, buildings, or other public property.[15] Thus, it has been held that a municipal corporation may absolutely prohibit the placing of billboards and signs on a temporary shed erected by its permission by an individual over a sidewalk, pending building operations on the adjacent property.[16] And in Fifth Ave. Coach Co. v. New York,[17] the supreme court of New York held that an ordinance prohibiting the use of advertising wagons on the streets of the city is not so arbitrary and unreasonable that the courts will interfere with its enforcement by a municipality which has charter authority to pass such ordinances as it may deem necessary and proper for the good government of the city and its inhabitants, and to regulate the exhibition of advertisements. This decision was placed partly upon the ground that the city owned the fee to the street, partly because these wagons and the exaggerated and gaudy advertisements thereon would attract crowds and produce congestion. As to the second reason assigned, it is interesting to note that in Germany a police ordinance against covering roofs with advertisements was sustained on the ground that such advertisements, by causing people to stop, impeded traffic.[18] Since a park is "a piece of ground inclosed for purposes of pleasure, exercise, amusement, or ornament," [19] a park commissioner whose statutory duty it is "to maintain the beauty and utility of all such parks, squares, and public places as are situated within his jurisdiction," has no authority to allow advertisements on a park fence, since this amounts to a perversion of the purpose of the park.[20]

Under its general police power, a municipality may regulate the use of signs and billboards, even on private property, so far as is reasonably necessary to protect the public health or safety, as, for example, from falling billboards and signs, and danger from fire.[21]

But municipal corporations are not empowered under their police power to forbid the maintenance of billboards, within its limits, on private lands merely because their appearance may be offensive to persons of refined taste, where the Constitution forbids the taking of private property for public use without compensation.[22] Still less can it prohib-

[15] State v. Wightman, 78 Conn. 86, 61 Atl. 56; Com. v. McCafferty, 145 Mass. 384, 14 N. E. 451; St. Louis v. St. Louis Theatre Co. 202 Mo. 690, 100 S. W. 627; Ivins v. Trenton, 68 N. J. L. 501, 53 Atl. 202, affirmed without opinion in 69 N. J. L. 451, 55 Atl. 1132; Sands v. Trenton, — N. J. L. —, 57 Atl. 267; C. J. Sullivan Advertising Co. v. New York, 61 Misc. 425, 113 N. Y. Supp. 893; Wilkes Barre v. Burgunder, 7 Kulp, 63.

[16] C. J. Sullivan Advertising Co. v. New York, 61 Misc. 425, 113 N. Y. Supp. 893.

[17] 194 N. Y. 19, 86 N. E. 824, 16 A. & E. Ann. Cas. 695, 21 L.R.A.(N.S.) 744.

[18] Freund, Pol. Power, p. 166.

[19] Perrin v. New York C. R. Co. 36 N. Y. 120.

[20] Tompkins v. Pallas, 47 Misc. 309, 95 N. Y. Supp. 875.

[21] Chicago v. Gunning System, 214 Ill. 628, 73 N. E. 1035, 2 A. & E. Ann. Cas. 892, 70 L.R.A. 230; Crawford v. Topeka, 51 Kan. 756, 37 Am. St. Rep. 323, 33 Pac. 476, 20 L.R.A. 692; St. Louis Gunning Advertising Co. v. St. Louis, — Mo. —, 137 S. W. 929; Rochester v. West, 164 N. Y. 510, 79 Am. St. Rep. 659, 58 N. E. 673, 53 L.R.A. 548; State v. Whitlock, 149 N. C. 542, 128 Am. St. Rep. 670, 63 S. E. 123, 16 A & E. Ann. Cas. 765.

[22] Varney & Green v. Williams, 155 Cal. 318, 132 Am. St. Rep. 88, 100 Pac. 867, 21 L.R.A. (N.S.) 741; Chicago v. Gunning System, 214

Photograph by Underwood & Underwood, N. Y.

FIFTH AVENUE, NEW YORK

it billboards which are not unsightly, merely because they contain advertisements.[23] Thus, ordinances enacted solely for æsthetic reasons, forbidding the erection of signs and billboards on private lands bordering on any boulevard, pleasure drive, or residence street, are unreasonable and void because they deprive owners of their property without compensation.[24]

In Varney & Green v. Williams,[25] the supreme court of California, in holding void a municipal ordinance forbidding the maintenance of billboards within its limits, said:

"That the promotion of æsthetic or artistic considerations is a proper object of governmental care will probably not be disputed. But, so far as we are advised, it has never been held that these considerations alone will justify, as in exercise of the police power, a radical restriction of the right of an owner of property to use his property in an ordinary and beneficial way. Such restriction is, if not a taking *pro tanto* of the property, a damaging thereof, for which, under article 1, § 14, Const., the owner is entitled to compensation."

In Chicago v. Gunning System,[26] the supreme court of Illinois said that the purpose of an ordinance forbidding, except under rigid restrictions, the placing

Ill. 628, 73 N. E. 1035, 2 A. & E. Ann. Cas. 892, 70 L.R.A. 230; Haller Sign Works v. Physical Culture Training School, 249 Ill. 436, 94 N. E. 920, — L.R.A.(N.S.) —; Com. v. Boston Advertising Co. 188 Mass. 348, 108 Am. St. Rep. 494, 74 N. E. 601, 69 L.R.A. 817; Passaic v. Paterson Bill Posting, Adv. & Sign Painting Co. 72 N. J. L. 285, 111 Am. St. Rep. 676, 62 Atl. 267, 5 A. & E. Ann. Cas. 995; People ex rel. Wineburgh Adv. Co. v. Murphy, 195 N. Y. 126, 88 N. E. 17, 21 L.R.A.(N.S.) 735; People v. Green, 85 App. Div. 400, 83 N. Y. Supp. 460; State v. Whitlock, 149 N. C. 542, 128 Am. St. Rep. 670, 63 S. E. 123, 16 A. & E. Ann. Cas. 765.

[23] Bryan v. Chester, 212 Pa. 259, 108 Am. St. Rep. 870, 61 Atl. 894.

[24] Chicago v. Gunning System, 214 Ill. 628, 73 N. E. 1035, 2 A. & E. Ann. Cas. 892, 70 L.R.A. 230; Com. v. Boston Advertising Co. 188 Mass. 348, 108 Am. St. Rep. 494, 74 N. E. 601, 69 L.R.A. 817; Haller Sign Works v. Physical Culture Training School, 249 Ill. 436, 94 N. E. 920, — L.R.A.(N.S.) —; People v. Green, 85 App. Div. 400, 83 N. Y. Supp. 460.

[25] 155 Cal. 318, 132 Am. St. Rep. 88, 100 Pac. 867, 21 L.R.A.(N.S.) 741.

[26] 214 Ill. 628, 73 N. E. 1035, 2 A. & E. Ann. Cas. 892, 70 L.R.A. 230.

of billboards on private property bordering on boulevards and residence streets, "seems to be mainly sentimental, and to prevent sights which may be offensive to the æsthetic sensibilities of certain individuals residing in or passing through the vicinity of the billboards. The extreme restrictions placed on the erection and maintenance of such boards, and the license fee placed thereon, indicate that these sections were intended to be prohibitive rather than regulative, and are, in our judgment, unreasonable."

In Haller Sign Works v. Physical Culture Training School,[27] the supreme court of Illinois, in a very recent case, held to be invalid a statute which, without any provision for compensation, forbade under penalty the erection and maintenance of any structure for advertising purposes within 500 feet of a public park or boulevard. In giving its reasons the court said:

"These suggestions lead unmistakably to the conclusion that the statute in question is an attempt to exercise the police power purely from æsthetic considerations, disassociated entirely from any relation to the public health, morals, comfort, or general welfare. However desirable it may be to encourage an appreciation of the beautiful in art and to cultivate the taste of the people of the state, still it has never been the theory of our government that such matters could properly be enforced by statute when not connected with the safety, comfort, health, morals, and material welfare of the people. Advancement along these lines, whether wisely or unwisely, has, so far, been left to the schools and colleges and the influence of social intercourse. The citizen has always been supposed to be free to determine the style of architecture of his house, the color of the paint that he puts thereon, the number and character of trees he will plant, the style and quality of the clothes that he and his family will wear, and it has never been thought that the legislature could invade private rights so far as to prescribe the course to be pursued in these and other like matters, although the highly cultured may find on every street in every town and city many things that are not only open to criticism, but shocking to the æsthetic taste. The courts of this country have, with great unanimity, held that the police power cannot interfere with private property rights for purely æsthetic purposes."

In Passaic v. Paterson Bill Posting, Adv. & Sign Painting Co.[28] the supreme court of New Jersey, in holding invalid an ordinance absolutely prohibiting the erection of billboards within 10 feet of the street line, said:

"It is probable that the enactment of § 1 of the ordinance was due rather to æsthetic considerations than to considerations of the public safety. No case has been cited, nor are we aware of any case, which holds that a man may be deprived of his property because his tastes are not those of his neighbors. Æsthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation."

But in Re Wilshire,[28a] the court in upholding the validity of an ordinance limiting the height of billboards to 6 feet, did so partly on the ground that billboards are usually of flimsy construction and if erected to a great height might be dangerous; but added as an additional reason:

"Moreover the views in and about a city, if beautiful and unobstructed, constitute one of its chief attractions, and in that way add to the comfort and well-being of the people."

In his work on Police Powers,[29] Mr. Freund said:

"It is generally assumed that the prohibition of unsightly advertisements (provided they are not indecent) is entirely beyond the police power, and an unconstitutional interference with the rights of property. Probably, however, this is not true. It is conceded that the police power is adequate to restrain offensive noises and odors. A similar protection to the eye, it is conceived, would not establish a new principle, but carry a recognized principle to further applications. In the matter of offensiveness, the line between a constitutional and an unconstitutional exercise of the police power must necessarily be determined by differences of degree. It is true that ugliness is not as offensive as noise or stench. But, on the other hand, offensive manufactures are useful, and the offense unintentional and inevitable, whereas in the case of an advertisement the owner claims the right to obtrude upon the public an offensive sight which they do not want, and which but for this undesired obtrusion would not be of the slightest value to him."

Unsightly advertisements are not objectionable solely because they are offensive to the æsthetic senses of refined persons. They directly cause a depreciation in the value of surrounding property. Many a prospective purchaser, looking for a home for himself and family, will refuse to purchase or rent an other-

[27] 249 Ill. 436, 94 N. E. 920, — L.R.A. (N.S.) —.

[28] 72 N. J. L. 285, 111 Am. St. Rep. 676, 62 Atl. 267, 5 A. & E. Ann. Cas. 995.

[28a] 103 Fed. 620.

[29] Freund, Pol. Power, p. 166.

wise desirable property when he sees the surrounding houses and fences painted and plastered with glaring advertisements in crude colors, accompanied, perhaps, by pictorial illustrations, of some brand of beer, whisky, tobacco, patent medicine, breakfast food, or corsets, or of some vaudeville announcement. It would seem, therefore, that it would not be unduly stretching the maxim, *Sic utere tuo ut alienum non lædas,* to make it cover these more offensive forms of advertisements.

Undoubtedly billboard advertising may be regulated to some extent by taxation. But such taxation cannot be so excessive as to be confiscatory. And accordingly it has been held that requiring license fees for the continued maintenance of billboards erected by permission of the city, the aggregate of which will greatly exceed the gross rental value of the boards, is unreasonable.[29a]

Regulations Concerning Height and Appearance of Buildings.

It has recently been held that a state may constitutionally limit the height of buildings or permit a municipality to do so without compensation, when this is done in the exercise of the police power to prevent injury to life or limb, or loss of property by fire, or injury to health by the cutting off of light and air.[30]

It has also been held, however, that the height of buildings cannot be limited, under the police power and without compensation, for purely æsthetic reasons.[31] But "if the primary and substantive purpose of the legislation is such as justifies the act, considerations of taste and beauty may enter in as an auxiliary." [32]

In Cochran v. Preston,[33] the supreme court of Maryland, in upholding an act of the legislature limiting the height of buildings in a section of Baltimore devoted to fine residences, public buildings, and works of art, did so upon the ground that the principal purpose of the act was to protect such buildings and works from the ravages of fire. The court, though admitting that the weight of authority was, as stated by Tiedeman,[34] that regulations designed only to enforce upon the people the legislative conceptions of artistic beauty and symmetry will not be sustained however much such regulations may be needed for the artistic education of the people, said:

> "It may be that, in the development of a higher civilization, the culture and refinement of the people has reached the point where the educational value of the fine arts, as expressed and embodied in architectural symmetry and harmony, is so well recognized as to give sanction, under some circumstances, to the exercise of this power, even for such purposes."

An ordinance authorizing the refusal of permits for the erection of buildings unless they conform in size, general character, and appearance to those previously erected in the same locality, and to be such as will not tend to depreciate the value of surrounding improved or unimproved property, is not covered by charter authority to make regulations to guard against construction of buildings so as to be unsafe or inflammable or offensive or deleterious to health, or dangerous to life, limb, or property; nor does the grant of general police power, and power to provide for the general welfare, authorize such ordinance.[35]

In the Copley Square Case,[36] the su-

[29a] Chicago v. Gunning System, 214 Ill. 628, 73 N. E. 1035, 2 A. & E. Ann. Cas. 892, 70 L.R.A. 230.

[30] Welch v. Swasey, 214 U. S. 91, 53 L. ed. 923, 29 Sup. Ct. Rep. 567, affirming 193 Mass. 364, 118 Am. St. Rep. 523, 79 N. E. 745, 23 L.R.A.(N.S.) 1160; Cochran v. Preston, 108 Md. 220, 129 Am. St. Rep. 432, 70 Atl. 113, 15 A. & E. Ann. Cas. 1048, 23 L.R.A.(N.S.) 1163.

[31] Cochran v. Preston, 108 Md. 220, 129 Am. St. Rep. 432, 70 Atl. 113, 15 A. & E. Ann. Cas. 1048, 23 L.R.A.(N.S.) 1163.

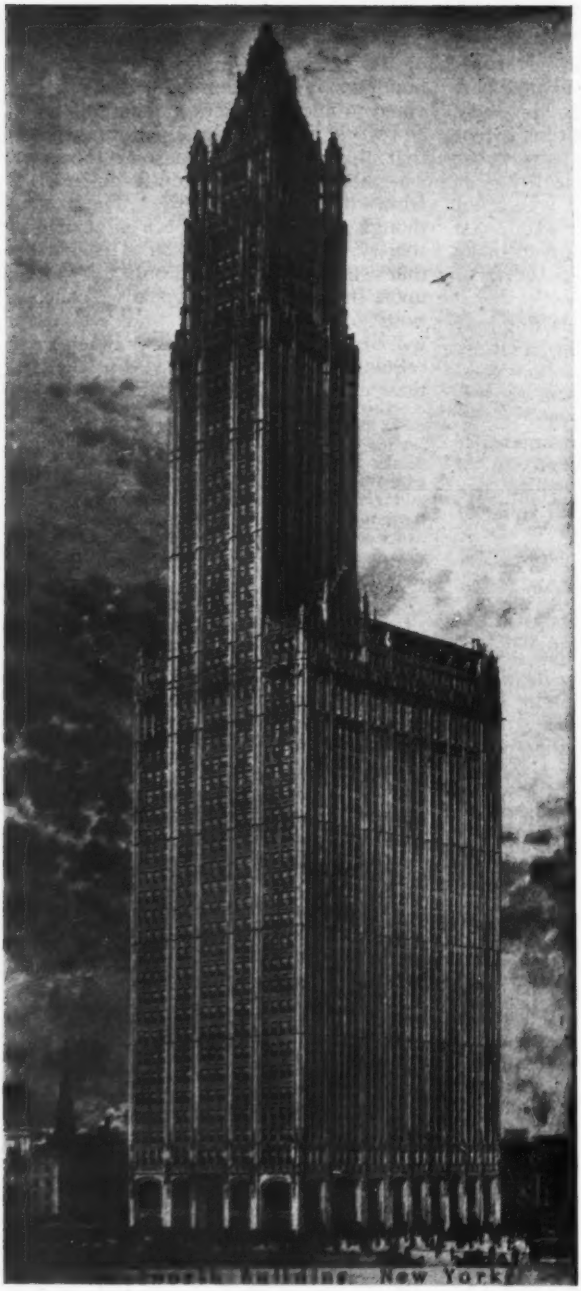
[32] Welch v. Swasey, 193 Mass. 364, 118 Am. St. Rep. 523, 79 N. E. 745, 23 L.R.A.(N.S.) 1160, affirmed in 214 U. S. 91, 53 L. ed. 923, 29 Sup. Ct. Rep. 567.

[33] 108 Md. 220, 129 Am. St. Rep. 432, 70 Atl. 113, 15 A. & E. Ann. Cas. 1048, 23 L.R.A.(N.S.) 1163.

[34] State & Federal Control of Persons & Property, vol. 2, p. 755.

[35] Bostock v. Sams, 95 Md. 400, 93 Am. St. Rep. 394, 52 Atl. 665, 59 L.R.A. 282.

[36] Atty.-Gen. v. Williams (Knowlton v. Williams) 174 Mass. 476, 55 N. E. 77, 47 L.R.A. 314, affirmed in 188 U. S. 491, 47 L. ed. 559, 23 Sup. Ct. Rep. 440.



Highest Office Building in the World.

preme court of Massachusetts, in an interesting opinion, held to be constitutional an act of the legislature which, after providing for compensation, limited the height of buildings surrounding a public square in Boston, in order to promote its beauty and attractiveness, and to prevent unreasonable encroachments upon the light and air previously received, and further providing that above the limits fixed there might be erected such steeples, towers, sculptured ornaments, and chimneys as the park commissioners might approve. The following extracts sufficiently show the reasoning on which the decision was based:

"The grounds on which public parks are desired are various. They are to be enjoyed by the people who use them. They are expected to minister not only to the grosser senses, but also to the love of the beautiful in nature in the varied forms which the changing seasons bring. Their value is enhanced by such touches of art as help to produce pleasing and satisfactory effects on the emotional and spiritual side of our nature. Their influence should be uplifting and, in the highest sense, educational. If wisely planned and properly cared for they promote the mental as well as the physical health of the people. For this reason it has always been deemed proper to expend money in the care and adornment of them to make them beautiful and enjoyable. Their æsthetic effect never has been thought unworthy of careful consideration by those best qualified to appreciate it. It hardly would be contended that the same reasons which justify the taking of land for a public park do not also justify the expenditure of money

to make the park attractive and educational to those whose tastes are being formed and whose love of beauty is being cultivated. We have already quoted from the information the language in regard to the surroundings of the square. The counsel on both sides referred in argument to the well-known buildings which constitute these surroundings. Trinity Church, the Museum of Fine Arts, the Boston Public Library, the New Old South Church, the Second Church of Boston, and the buildings of the Massachusetts Institute of Technology, all face the beholder who stands on Copley Square and looks around him. Some of these buildings are public in the ordinary sense of the word, and some of the corporations which own them have been beneficiaries of the Commonwealth on account of their quasi public character, and the public certainly feels an interest in them. It is argued by the defendants that the legislature, in passing this statute, was seeking to preserve the architectural symmetry of Copley Square. If this is a fact, and if the statute is merely for the benefit of individual property owners, the purpose does not justify the taking of a right in land against the will of the owner. But, if the legislature, for the benefit of the public, was seeking to promote the beauty and attractiveness of a public park in the capital of the Commonwealth, and to prevent unreasonable encroachments upon the light and air which it had previously received, we cannot say that the law-making power might not determine that this was a matter of such public interest as to call for an expenditure of public money, and to justify the taking of private property."

If the reasoning of the Copley Square Case should be adopted, and it seems to be sound and to have met with approval whenever discussed, it would be constitutional for the legislature on making compensation, for purely æsthetic reasons, to authorize a municipality to limit the height and style of architecture of private buildings, where the purpose is a public one, such as to preserve the architectural harmony and beauty of a public square, or of the surroundings of a public park or building.

Memorial Hall.

In Kingman v. Brockton[37] the supreme court of Massachusetts, in upholding the validity of a statute authorizing a city to appropriate money to erect a hall as a memorial to the soldiers and sailors of the Revolution, said:

"This may properly be deemed to be a public purpose, and a statute authorizing the raising of money by taxation for the erection of such a memorial hall may be vindicated on the same grounds as statutes authorizing the raising of money for monuments, statues, gates, or archways, celebrations, the publication of town histories, parks, roads leading to points of fine natural scenery, decorations upon public buildings, or other public ornaments or embellishments, designed merely to promote the general welfare, either by providing for fresh air or recreation, or by educating the public taste, or by inspiring sentiments of patriotism or of respect for the memory of worthy individuals."

Roads and Bridges.

In Higginson v. Nahant,[38] the supreme court of Massachusetts held that the selectmen of a town have authority to lay out a road over land of a citizen and against his consent, though valueless for any ordinary business purpose and designed solely to provide access to points or places on his lands of pleasing natural beauty, saying that "pleasure travel may be accommodated as well as business travel." In Farist Steel Co. v. Bridgeport,[39] it was held that the establishment of a harbor line for the mere purpose of preventing the view of an expensive and sightly bridge being cut off by wharves and buildings, and not in the interest of navigation, was not a public purpose for which private property could be taken without violating constitutional rights. The right to accomplish the same purpose on making compensation was, however, not involved.

To briefly recapitulate, we think it may be said: (1) That municipal corporations may prevent any unæsthetic use of their own streets and public property; (2) that municipal corporations may constitutionally be empowered to expend public money raised by taxation for purposes essentially and primarily æsthetic; (3) that they may be authorized to exercise the power of eminent domain to obtain land to be used for æsthetic purposes, on making just compensation; (4) that as yet, the police power of the state has not been held, with possibly one or two exceptions, to extend so far as to authorize it to interfere without compensation, with any objectionable use an owner may see fit to make of his property, on the sole ground that such use is unæsthetic, though in the future, the growing culture of the people may cause such advance to be made.

[37] 153 Mass. 255, 26 N. E. 998, 11 L.R.A. 123.

[38] 11 Allen, 530.

[39] 60 Conn. 278, 22 Atl. 561, 13 L.R.A. 590.

Commission Government of Cities

Is it the remedy for "The one conspicuous failure of the American people?"

BY L. A. WILDER
Of the New York Bar

ALTHOUGH we smile at what we may choose to call the artlessness of the ancient Trojans in receiving within the city gates the wooden horse filled with hostile soldiers, we seem to regard as a matter of course the conquest of the modern American city by the enemy, the political boss and his henchmen, through a similar use of the symbolic elephant or donkey. And when innovations are urged for the purpose, among others, of ousting from control and influence those whose slogan is "Politics for revenue only," when it is proposed that resort be had to the drydock of business system and principles to remove these barnacles from the ship of state, there are those who arise and seek to interpose as a plea in bar the sacredness of our democratic traditions.

Violation of Tradition.

But, after all, a tradition is but an actually or supposedly successful experiment, glorified, and is reared upon the ashes of earlier traditions which, in turn, have supplanted other traditions. Just as it is incumbent upon a people to have a high respect for its true traditions, so it is proper to inquire whether that which is styled a tradition can justly lay claim to that status.

To start this inquiry in respect of a political or governmental institution, it is but necessary to take note of the fundamental truth that government is a means, and is successful or unsuccessful accordingly as it accomplishes, or fails to accomplish, its avowed and desired ends. If, to establish the truth of Ambassador Bryce's statement that the government of their cities is "the one conspicuous failure" of the American people, anything is necessary beyond the common knowledge of the squandering of public funds by those employed (formally at least) to conserve them, through corruption, graft, and inefficiency, or of the taking of tribute by the public "servant" from both the honest and the vicious citizen, by visiting reprisals upon the one, and allowing the other to ply his unlawful trade,—if anything is necessary beyond the general conviction that such things are common, and not exceptional, damning testimony has already been given. San Francisco, Pittsburg,

Philadelphia, and Boston are some of the witnesses. "If we have a prince, . . . it is in order that he may keep us from having a master." If, having a prince, we nevertheless have a master, what is to be done? If the theory of representative democracy, with its decentralization of powers, its checks and balances, has proven a failure as applied to municipal affairs, and has enabled the boss to become our master, should not a remedy be applied? Certainly, if an efficient remedy can be found, its application should not, because it involves a departure from old forms, be stayed upon the theory that it violates any fancied traditions; for any traditions of municipal government that may have heretofore existed have long since been shattered by the cupidity of the politician and the supineness of the citizen. So, the matter of finding a remedy is purely a question of efficacy, and not of sentiment. And no proposed change should be rejected because it cannot, or does not purport to, cure all the ills the city is heir to, for, in the words of Rousseau, "Those vices which render social institutions necessary are the same which render the abuse of such institutions unavoidable." The aim, then, is to minimize the evils so far as possible; and it is to accomplish this purpose that so many cities have adopted the so-called commission form of government.

Meaning and Rise of Commission Government.

The term "government by commission" as applied to municipalities is unhappily more arbitrary than descriptive, for the term has come to be a symbol of decentralized power, through its use to characterize the custom of delegating certain executive functions of state and Federal government to "commissions," such as public service commissions and the like; whereas the most striking feature of the new form of city government which it is employed to describe is centralization of power. Broadly, the plan consists in merging the legislative and executive functions of the government, and vesting the consolidated powers in a board of directors, or commissioners, as they are called, who are the only elective officers in the system. The present interest in, and spread of, the idea (and it has been adopted in about 160 cities) had its inception, as is well known, in the measures adopted in the city of Galveston during the chaotic conditions that followed the disaster of 1900; and the form of government which it installed constitutes one of two general plans, the other being known as the Des Moines plan.

The Galveston Plan.

Even before the disaster, the financial condition of Galveston was deplorable. That clearest indication of insupportable prodigality and corrupt mismanagement, the meeting of annual deficits by bond issues, had become a habit (a tradition, shall it be said?), and this habit alone had created a debt of nearly three millions of dollars. And when the greater part of the city was destroyed, a few business men went in desperation to the legislature, and procured from it a new charter vesting the city government in five commissioners, two of whom were to be elected, and three appointed by the governor. Shortly afterward the entire five were made elective, and all are elected at large. One of their number, who is called the mayor-president, presides over the deliberations of the commission, but is not invested with the power of veto. By a majority vote this body determines which of remaining members shall head each of the four departments into which the administration is divided, the mayor-president having no department. These departments are finance and revenue, waterworks and sewerage, police and fire, and streets and public property. The minor officers in each department are appointed by the commissioner who is its head, although the commission acting as a whole makes the more important appointments, and awards all contracts; and it is at all times subject to a sort of supervisory influence of the mayor-president.

The Des Moines Plan.

The Des Moines or "improved" plan is somewhat more elaborate. As in Galveston, the commission consists of a mayor and five commissioners, all elected at large, who have complete control of the

municipal affairs. The names of candidates (and any person can be nominated by a petition of twenty-five citizens) are placed alphabetically and without political designation upon the primary election ticket; and from the eight candidates for commissioner, and the two for mayor, receiving the highest number of votes at the primary, the commission is selected at a final election, the names being arranged upon the ticket as at the primary. The mayor is the head of the department of public affairs, and exercises, without veto power, a general supervision over the four other departments, namely, accounts and finances, public safety, streets and improvements, and parks and public property. By majority vote the commission appoints all other officials and their assistants, who are selected under a civil service board; but each commissioner selects the subordinate employees in his own department. A salient feature of the plan is the publicity it requires in all things. For instance, not only the expenditure but the source of campaign funds must be reported in a sworn statement; every motion, resolution, and ordinance must be in writing, and the vote of every member of the commission must be recorded; each month the commission is required to print and effectively distribute an itemized statement of all receipts and expenses, and a summary of its proceedings; at the end of each year, the commission must cause an examination of all books and accounts to be made, and publish it in pamphlet form; and every ordinance appropriating money, ordering improvements, authorizing any contract, or granting any franchise, must be complete and in final form and remain on file for public inspection at least one week before its passage. Then there is the initiative, referendum, and recall. If the council passes objectionable, or fails to pass, desired, legislation, twenty-five per cent of the voters may, by petition, require that the matter be submitted to the voters. All public utility franchises must be authorized by a majority of the voters. The right of recall is invoked by petition requiring the calling of an election, and the recalled commissioner may be a candidate if he so desires.

Whether this plan solves the serious problem in municipal affairs is a question which is receiving much attention. Is it a cure for city disorders, or is it a crutch? Some light on this question is to be obtained by considering what, in theory, the plan is designed to do, and what in practice, it has accomplished.

Advantages of Commission Government.

The advocate of commission government claims that it will improve present conditions, because—

It centralizes power and its concomitant, responsibility.

It adopts the short ballot.

It abolishes the ward system by elections at large.

It tends, through nonpartisan elections, to eliminate political intrigue.

It is safeguarded by the provisions for initiative, referendum, and recall.

Concentration of Power.

Of these, the greatest is concentration of power; it is the keystone. Through it, more than through any other element, the present success of the plan will endure or decline. Just as an honest and efficient commission can make it a power for good, so the corrupt or inefficient one can make present conditions appear good by comparison. Concentrated power prima facie carries with it a check to its possible perversion, in concentrated responsibility. But this, standing alone, is not an assurance, for responsibility must have a local habitation as well as a name,—it must be actual and enforced, rather than theoretical and potential. And if it is to be anything more than a mere name, there must be an alert and exacting interest on the part of the people. But this is also true under the old form of government. Militant and sustained public sentiment could, without changing the form of city government, rid it of much of the graft and incompetency. From this it follows that to make concentration of power and responsibility an argument for preferring a plan whose principal asset it is, over a system of decentralized powers, there must be, inherent in it, or residing elsewhere within the plan, something which will insure public interest and watchfulness. This, it would seem,

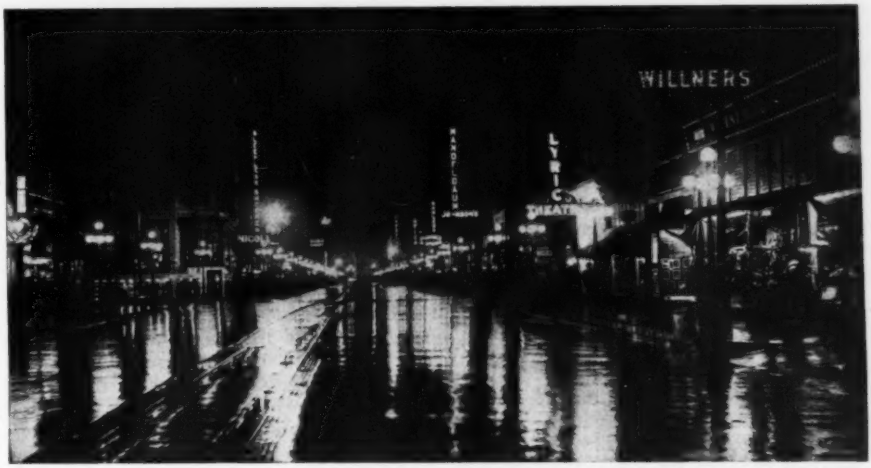


Photo by Doubleday-Page Syndicate, N. Y.

MAIN STREET, DES MOINES AT NIGHT
A city prospering under Commission Government

the commission plan has. Heretofore there has been no point upon which the citizen could focus his attention. It is difficult for the observer of a flock of fowls to tell which one emitted the squawk. And many a citizen who, without a previously whispered word of the party boss in the right direction, has gone to the city hall to get redress or action, knows how one can be shunted from the mayor to the street commissioner, thence to the commission of public safety, and thus through the list,—tossed in the administration blanket, as it were. The citizen who has sought to know the inner workings of the government has found himself groping in a mystic maze of subdivided powers and duties; puzzling over a number of departments, each administered independently of the others; and regarding, either as too profound for his understanding, or too frivolous for his contempt, the doings of the merry-andrews of municipal councils which are not adapted to city government. So, the seed of public interest in municipal affairs fell upon the rocky places, sprang up, and withered away. The commission plan places the whole responsibility upon the five commissioners, for they, either collectively or individually, appoint all subordinate officers, and may remove them for cause. If there is vice in any department, its head is responsible. This, it would seem, makes possible an actual and enforced responsibility, and when the public realizes that by manifesting a thorough interest it can get results, it is thought that such interest will be shown. It is against concentration of power that the plea for democratic traditions is mainly directed. But for years municipal government has been largely an unholy centralization of power in the boss of the dominant party. Better permissive than submissive centralization.

The Short Ballot.

Just as public interest directed toward the single point of responsibility must be a monitor to the commission, once it is elected, so the electorate, by like concentration through the short ballot, is enabled to choose capable and honest officials. Under this plan, the voters cannot be confused by a long list of candidates for minor offices, about whom little is known, nor their attention distracted by the placing at the head of the ticket of some well-known person. The commissioners are the only elective officers; and if by this plan suitable officials cannot be elected, it is difficult to see how suitable ones can ever be elected.

Election at Large.

With this feature is linked the abolition of ward lines by election at large. This should break the grip of the ward heeler upon a certain class of voters. It would seem that when he can promise neither favor nor benefit, his influence is gone, for the machine is perpetuated by rewarding the "faithful." Be this as it may, the election of commissioners at large makes it certain that the government will be administered for the city as a unit, and will eliminate the trading of votes between ward representatives.

Nonpartisan Elections.

Will candidacy by petition and primary and without party designation oust the boss? Probably there will be leaders under this plan, in the large cities at least, for it would seem that some sort of organization is necessary in a campaign covering a large city. But if the voters will avail themselves of the opportunity to choose competent and honest men, they can strike a blow at the spoils system, without which, as observed above, the machine, whose purpose is to control the city, cannot endure. Under the old system most persons having the honesty and ability which a public servant should possess were deterred from becoming candidates, for their self-respect would not permit them to "bend low and in a bondsman's note" seek a nomination from the party boss. Under the Des Moines plan, however, it is made possible for the voters to select the best men, and there is little if anything, to deter them from accepting, unless it be the matter of remuneration. And it is but necessary to observe, in this connection, that if a commission, by the elimination of graft, inefficiency, and the waste that attends the independent administration of departments, can place the city business upon a sound business basis, it is worth far more to any city than it will ever be paid in salaries.

Initiative and Referendum.

The advocacy of the initiative and referendum would seem inconsistent in those who urge the adoption of the commission plan and the abolition of the city council upon the ground that the functions of city government relate almost exclusively to the transaction of business, and involve little in the way of legislation. Certain it is that municipal government is largely administrative. The commission plan rests upon the assumption that it makes for honesty and efficiency in this department. And if there be confidence that a commission will be efficient and honest in respect of its paramount function, why anticipate that it will be less so in the discharge of its lesser duties? The recall alone would seem to be a sufficient safeguard in municipal affairs, for the initiative and referendum do not reach the administrative and chief branch of the government. One possible exception in favor of the referendum is the provision in the Des Moines charter for referring the question of granting public-service franchises. A franchise granted is a franchise granted, and cannot be "recalled." Nevertheless, what was said above concerning the initiative and referendum may also apply to the granting of franchises. The possibility of the abuse of the recall is one argument against it. But abuse of power and breach of trust are reasons for its adoption. Keeping in mind that all government is theoretically "derived from the just consent of the governed," and exists to promote the "general welfare," and not to furnish employment to the few at the expense of all, one finds little difficulty in answering the question, Which is the worse, the breach of a sworn duty and the violation of a trust reposed in one by society, or the abuse by some members of society of a means through which the entire body is enabled directly to secure relief from such breaches of duty? This abuse, moreover, is anticipatory rather than existing, for, as yet, the right of recall has not been invoked in any commission-governed city.

The Story of Galveston.

The story of how the Galveston commission, starting with a wrecked city and a bonded indebtedness of $2,850,000, created through meeting annual deficits by bond issues, placed the city affairs upon a business basis, is thus told in the recent book on City Government by Commission

(p. 213), edited by Clinton R. Woodruff: "The total floating debt of the city has been entirely paid off. It secured and paid for the services of a board of three eminent engineers, which devised plans for the great sea wall, and raised the grade of the city. These improvements have been completed at a total cost to the city and county jointly of more than $4,000,000. The commission rebuilt the city hall; rebuilt the waterworks pumping station; extended the water system; built three engine houses; repaired the different engine houses over the city damaged by the storm; repaved with brick the streets throughout the entire business section at a cost to the city of $183,027.07; built rock and shell roads at a cost of $181,064.04; provided a large amount of drainage at a cost of $245,664.47; extended the sewer system and adjusted the question of interest on the bonded debt by obtaining a reduction in the rate for a period of five years. Altogether, $609,755.58 have been expended out of the general fund for paving, shell roads, and drains, with the exception of $48,088.07, which was obtained from sale of bonds. The city has also paid off a number of old judgments, inherited from former administrations, aggregating $18,026.65, and retired $462,000 of the bonded debt; has purchased new fire engines and other equipment. The city employees have been paid promptly in cash, and the summer seasons passed through without borrowing a dollar. All this has been accomplished without a bond issue or a dollar of increased taxation, excepting the bonds issued for protective purposes." [1]

Commission Government in Des Moines.

The following excerpt from the same work shows something of what has been accomplished in Des Moines: "The old administration at the close of its fiscal year left a deficit of $119,199.82. This the commission met largely by the issue of bonds, in order that it might not be handicapped by a deficit at the beginning. At the end of the year the commission had an excess of cash over claims of $104,855.28, a gain during the year of $48,439.03. In other words, instead of running behind during the year $119,199.82, as the previous administration had done, it ran ahead $48,439.03, thus making a relative saving over the previous administration of $182,949.65. In a somewhat different way the Kansas City Star, in its pamphlet, . . . states the advantages accruing from the introduction of commission government in Des Moines. Here they are:

" 'Des Moines has been operating under the commission plan for more than a year, and that city has a population of 100,000. Here are some of the results of the first year of the new rule in that city:

[1] "Shortly after January 1, 1911," continues the writer, "the city auditor of Galveston issued the following statement for the period September 1, 1901, to January 1, 1911 (covering the life of commission government in Galveston). These figures tell their own story of careful, businesslike administration of the city's affairs:

"Raising the grade of the city	$2,000,000.00
Additional gulf front protective improvements	179,388.65
Additional grade raising West End	176,327.76
Water-works improvements	312,242.11
Brick paving in streets	237,902.36
Drainage	319,651.63
Sewer extensions	290,231.04
Rock and shelled streets	279,647.77
Addition to electric light plant	37,459.76
Total improvements	$3,832,851.08

"Of these improvements, $2,759,170.88 were paid for in bonds and $1,073,680.20 were paid for out of the general revenue of the city. The city has also paid out of its general revenue almost $200,000 floating indebtedness, left over by the previous city administration and for three new engine houses and rebuilding the city hall.

"Exclusive of the bonds issued for grade raising and school purposes, the commissioners have issued the following bonds:

"For paving, drainage and shelling	$300,000.00
Additional gulf front protection	225,000.00
Filling north of Broadway and west of Thirty-third	78,270.88
Balance sewer bonds on hand when commission took over the city government	227,400.00
Total	$830,670.88
Less bonds now on hand and unsold	71,500.00
Total net	$759,170.88

"The total amount of bonds paid off and destroyed by the board of commissioners, including $550,000 of the grade-raising bonds retired with state donation funds, is $1,124,336.62. There were also destroyed $620,663. 38 in bonds left in various funds from the mayor-aldermen administration."

" 'The police force taken out of politics, reorganized, increased, and kept to a higher standard of efficiency than ever before. The same improvement has been made in the fire department.

" 'The streets are in better condition as to repairs; are cleaner and better lighted; more paving and more sidewalks built than ever before.

" 'All Des Moines streets were renamed and neat street signs placed at every corner.

" 'Water rates reduced twenty per cent.

" 'Wages of day laborers increased to $2.25 and teamsters to $4.50 for an eight-hour day.

" 'An arch cement bridge eighty feet wide built across the Des Moines river at a cost of $150,000, and paid for without a bond issue.

" 'The sanitary conditions improved.

" 'Politics entirely eliminated from every department of the city.

" 'All complaints of citizens for temporary repairs in sidewalks, streets, sewers, etc. attended to the same day they are received.

" 'Seventy-one more arc lights established on the streets and 634 lights that formerly burned on the "moonlight schedule," now burn every night at an expense of almost $12,000 less than the old rate.

" 'And all this improvement in Des Moines city government has been made at a saving to the taxpayers of more than $224,000 in a year, and in addition the tax levy for next year has been reduced almost three mills.' "

Vigilance Required.

These wonders have been worked by commissions in two cities, and reports from other cities show similar success. Nowhere has the plan failed. Whether the clean sweep is due to the fact that the broom is new remains to be seen. Whether the citizens, now aroused and enthusiastic, will become so satisfied in the years of plenty that they will relax their vigilance and suffer the new government to be perverted rests with the future and with them, for an inquisitive and active public sentiment must concur with a representative form of government, if there is to be real representation.

"I am in favor of as few elective offices as may be consistent with proper accountability to the people, and a Short Ballot."

—Governor Chas. E. Hughes of New York in his Annual Message to the Legislature, Jan. 4, 1910.

"The Long Ballot is the 'jungle' of which I have been writing."

—Judge Ben. B. Lindsey of Denver.

"Governmental power should be concentrated in the hands of a very few men, who would be so conspicuous that no citizen could help knowing all about them, and the elections should not come too frequently."

—Theodore Roosevelt.

Municipal Ownership of Public Utilities

BY ABEL C. WILLCOX

Of the New York Bar

AMONG the subjects of rapidly growing importance in the modern city is that of municipal ownership of public utilities. In some of the cities of Europe, municipal ownership has long been in apparently successful operation, and is gradually extending to include more and more of the industries of a public nature. In America, while the people have not been so ready for public ownership, there has been, in recent years, a steadily increasing general interest in this matter and a large growth of municipal ownership.

In regard to this growth, Professor Frank Parsons, in his "City for the People," states that in 1800 there were sixteen waterworks in the United States, all built and owned by private parties except one in Winchester, Virginia; fourteen of the fifteen private plants have since become public, and from 1800 to 1896 the proportion of public works went up from 6.3 per cent to 53.2 per cent of the total. Since the latter date the proportion has been steadily increasing in the United States, and in Great Britain is even larger.

Several municipalities in this country own their gas works, and in Great Britain more than one third of the gas works are public. The number of public electric plants also has shown a rapid increase; and in Great Britain a large proportion of the street railway systems belong to municipalities. Likewise, in most European cities where there is not general government ownership of telephones and telegraphs, the municipalities now own the local systems.

What are Public Utilities?

In addition to the supply of water, gas, and electricity, and the operation of street railways and telephone and telegraph systems, municipalities in different parts of the world have undertaken public slaughterhouses and markets, baths, laundries, washhouses, harbors, and piers, fuel yards, house building, pawnshops, insurance, and many other enterprises. But as it is well settled, in the United States at least, that public funds can be used only for public purposes, and consequently, that public ownership can extend only to enterprises of a public nature, some courts have placed limitations upon proposed municipal ownership on the ground that the subject of such ownership was not a public purpose.

In the United States, municipal ownership of the water supply is now generally recognized, not only as permissible, but as an almost absolute necessity, and among the cities, towns, and villages which are still supplied by private enterprise, changes to public ownership are rapidly taking place. The right of cities and towns to supply gas and electricity to their inhabitants for lighting has also long been judicially recognized,[1] and, as stated above, many municipalities of the United States now own their gas and electric light plants.

So, it has recently been held that the operation of an ice plant by the municipal authorities of a city, in connection with the electric light and waterworks plant, for the purpose of furnishing ice

[1] See Crawfordsville v. Braden, 130 Ind. 149, 30 Am. St. Rep. 214, 28 N. E. 849, 14 L.R.A. 268; Opinion of Justices, 150 Mass. 592, 24 N. E. 1084, 8 L.R.A. 487; Hequembourg v. Dunkirk, 49 Hun, 550, 2 N. Y. Supp. 447.

to the inhabitants of the city, is entirely legal.[2]

And it has also been held that a municipal corporation may own, control, and manage a farm house within its limits, which has come into its possession in a lawful manner, disconnected from any public use and for its own emolument, benefit, and advantage.[3]

But a city, although having charter power and authority, through its city council, to purchase and provide for the payment for "all such real estate and personal property as may be required for the use, convenience, and improvement of the city," has no authority to purchase land for the exclusive use of a fair association, although incidental advantages accrue therefrom to the city, resulting in the promotion of its commercial or business prosperity.[4]

And implied authority to operate a rock quarry outside the limits of a city is not conferred upon the city by general provisions in its charter for the purchase, holding, sale, and conveyance of real and personal property necessary for its uses and purposes.[5]

In Massachusetts it has been held[6] that the purchase by a city or town of coal and wood as fuel, and the resale thereof to its inhabitants, is not a public service which can be authorized by the legislature.

Justice Oliver Wendell Holmes, Jr., dissenting, however, said: "I am of opinion that when money is taken to enable a public body to offer to the public, without discrimination, an article of general necessity, the purpose is no less public when that article is wood or coal, than when it is water or gas or electricity or education, to say nothing of cases like the support of paupers, or the taking of land for railroads or public markets."

But the same court, in a subsequent opinion,[7] to the same effect as the first, met this former minority view, saying: "The business of selling fuel can be conducted easily by individuals in competition. It does not require the exercise of any governmental function, as does the distribution of water, gas and electricity, which involves the use of the public streets and the exercise of the right of eminent domain. It is not important that it should be conducted as a single large enterprise with supplies emanating from a single source, as is required for the economic management of the kinds of business last mentioned. It does not even call for the investment of a large capital, but it can be conducted profitably by a single individual of ordinary means."

And in Michigan, also, it has been held[8] that while a municipality has the right, through its board of poor commissioners, to provide fuel for needy citizens, and in an emergency, when a coal famine appears imminent and local dealers are combining to advance the price of coal, may purchase in any market such amount of fuel as may be necessary for that purpose, it cannot enter into a commercial enterprise, such as buying and selling coal to its citizens as a business, thereby entering into competition with dealers in coal,—such use of public money not being for a public purpose.

Advantages and Disadvantages.

Among the chief advantages of municipal ownership, as shown by statistics from cities where the change has been made from private to public ownership, are lower rates and better service. In regard to lower rates, Professor Parsons states[9] that when Glasgow took over the tramways, fares were reduced one third at once and have since been reduced to less than one half the fares collected by the private company. Water rates average 20 per cent to 50 per cent lower with

[2] Holton v. Camilla, 134 Ga. 560, 68 S. E. 472, 20 A. & E. Ann. Cas. 199, 31 L.R.A. (N.S.) 116.

[3] Libby v. Portland, 105 Me. 370, 74 Atl. 805, 18 A. & E. Ann. Cas. 547, 26 L.R.A.(N.S.) 141.

[4] Eufaula v. McNab, 67 Ala. 588, 42 Am. Rep. 118.

[5] Duncan v. Lynchburg, 2 Va. Dec. 700, 34 S. E. 964, 48 L.R.A. 331.

[6] Opinion of Justices, 155 Mass. 598, 30 N. E. 1142, 15 L.R.A. 809.

[7] Re Municipal Fuel Plants, 182 Mass. 605, 66 N. E. 25, 60 L.R.A. 592.

[8] Baker v. Grand Rapids, 142 Mich. 687, 106 N. W. 208.

[9] "City for the People," p. 115.

public works than with private works in various localities in the United States. Gas and electric rates have been lowered even more under public ownership, and the latest reports from municipalized works seem most favorable.

Under private ownership of public utilities, particularly where this amounts to a private monopoly, as is most often the case, the natural tendency is to raise the cost to the consumer and lower the quality of the product just as far as possible. The interests of the private owner of a public utility and of the public are directly antagonistic, and the natural aim of the former is principally, if not wholly, to increase financial returns.

Of course, to a certain extent, this very aim limits high prices and low quality, as too high prices and too low quality so far diminish consumption as to decrease net profits; and Mr. Robert P. Porter [10] even goes so far as to characterize as a "lie" the statement that private proprietors extort unfair profits out of the public and also fail to perform good service. But it is a notorious fact, in the United States, that many, if not a great majority of public service corporations, through over-capitalization, stock manipulations, and the addition of "water" to their stock, are obtaining from the people immense returns on their real investment.

In England, however, while rates may have been lowered under municipal ownership, and while the local authorities show "profits in relief of taxes," Mr. Porter asserts [11] that these "profits" are purely fictitious and only a matter of improper bookkeeping, and [12] that the extension of municipal ownership has been accompanied by a continuously increasing rate of taxation, together with an enhanced valuation of taxable property.

As to the general desirability and advisability of municipal ownership, and of extending it to include more forms of public utilities, there is a vast difference of opinion among the students and writers on the subject. Many political economists strongly advocate municipal ownership as a remedy for a great number of the existing civic evils. Professor Parsons says: [13] "One of the greatest advantages of public ownership is its tendency to relieve our government of corrupting relations with men of wealth and joint corporations." And he further states that in studying the effects of public electric works he has found many instances in which the purification of municipal politics was clearly aided by the change to public ownership; and that Professor Bemis, after examining the history of the gas works in Philadelphia, Richmond, Wheeling, and all the other cities having public works in 1891, declared that experience in all those cities had shown that public ownership tends to diminish political corruption.

Professor Parsons points out, however, that one of the chief difficulties with municipal ownership, in practice, is that it is not public ownership; that is, the municipal government is not in fact owned and controlled by the people, but by a few politicians. And under such conditions it would seem that the municipal ownership of public utilities only affords greater opportunities for fraud and corruption, and makes conditions worse, in every way, than under private ownership.

Even in England, where municipal ownership has become very extensive, and where, as pointed out by both English and American writers, conditions are more favorable for successful municipal ownership than in the United States, Major Leonard Darwin, in his "Municipal Trade," points out the many dangers of extensive municipal ownership,—chief among them, probably, being the danger of corruption and inefficiency in the local government, and he concludes with the statement [14] that, "as regards the question of administration, the balance of advantages and disadvantages tells heavily against municipal trade."

Discussing conditions in the United States, Major Darwin says [15] that, granting that the constant struggle over rates

[10] "Dangers of Municipal Ownership," p. 51.
[11] Pages 207 et seq.
[12] Pages 135 et seq.
[13] "City for the People," p. 154.
[14] Municipal Trade, p. 135.
[15] Page 124.

and regulation of the private corporations owning franchises is responsible for more crimes, corruption, and scandals in New York city than all the enterprises under direct municipal control combined,—docks, ferries, markets, bridges, parks, and water supply,—it does not follow that, even in America, municipal ownership is to be preferred to private enterprise.

"In a country where the appointment of additional municipal employees is technically known as 'creating new voting stock,' and where this voting stock is known to be used for corrupt purposes, can it possibly be right to increase the range of municipal activities with the object of decreasing this corruption? The direct control of the voter, resulting from his being directly employed by the municipality, must give a corrupt gang the firmest hold, even if it does not enable them to obtain an amount of plunder as great as that which can be squeezed from private companies. This is the strongest as well as the simplest answer to the contention that the tendency to municipal corruption is an argument in favor of municipal trade." [16]

"If the promoters are prevented by suitable regulations from making vast sums of money, the temptation to bribery and corruption will, without doubt, be diminished. The demoralizing influence of the immense value of the concessions now obtainable by corrupt speculators in the United States points to the advisability of lessening those prizes, rather than to the attempt to purfiy municipal administration by adding to the functions of municipalities." [17]

"The foregoing considerations appear to me to indicate that the extensive introduction of municipal trade would tend to make the fight against corruption in America more and more difficult as time went on. If this policy were adopted, the evil would become more permanently ingrafted on to the municipal system; whereas time will be working on the side of the municipal reformer in attacking abuses connected with the quasi monopolies in the hands of private companies, especially if proper regulations with regard to the concessions granted to them are generally introduced." [18]

And he concludes: [19] "Judged solely from the point of view of the corrupting effect, the retention of quasi monopolies in the hands of private companies in England is by far the less probable source of evil, though the evil, should it arise, might be very bad; whilst the direct employment of labor by municipalities is the more probable source of demoralization. It is a balance of evils and probabilities; and it seems to me that if that balance be fairly made, there can be no doubt that the possibility of bribery and 'deals' in connection with private enterprises should not be used as the basis of an argument in favor of municipal trading in England."

An objection to municipal ownership, emphasized by Mr. Porter in his "Dangers of Municipal Ownership," [20] is the burden of ownership obligations. He points out the vast and rapidly increasing British municipal debt, and, by comparison with the municipal debt of the United States, shows that while the two were practically the same in 1880, the former was in 1904 nearly $800,000,000 greater than the latter; and of the portions of the municipal debt of the respective countries sunk in reproductive undertakings, less the respective capital of the municipal waterworks of the two, about which, as Mr. Porter says, there is no strong contention, the British debt was, in 1904, about three times that of the United States, and the average debt of eighteen representative American cities per capita in 1904–5, Mr. Porter states to have been $40.96, while the same figures for eighteen British cities were $113.62.

It would seem, however, that the more important public utilities—those, particularly, for which private corporations must obtain franchises from the public—might be gradually acquired by municipalities without the incurring of public debt; that is, contracts might be made, and in fact often are made, with private proprietors, in granting franchises, whereby, after a

[16] Pages 125, 126.
[17] Page 129.
[18] Page 132.
[19] Page 133.
[20] "Dangers of Municipal Ownership," pp. 135 et. seq.

certain term, the public-service plant shall become the property of the municipality, free from debt, without any further payment. Professor Parsons states [21] that Berlin last extended the franchises of its street railway companies until 1920, under the condition (among others) that at the end of the term all property of the company located in the streets or on city land, and all patents, shall come to the city without payment. Leipsic has a lighting contract providing that at the end of the franchise term the work shall become the property of the city, without cost. In Hamburg, the street railway tracks revert to the city at the end of the charter period. In 1894, an outside company offered to build a plant of 1,000 electric lights in Minneapolis, and sell it to the city for $1 at the end of a five-year franchise, if meanwhile it might receive $150 per arc per year, which was the price the old company was getting.

And even if the public-service plant is acquired by the city by purchase from the private owners, it may be provided, as in the McLeod law, passed by the Michigan legislature in 1899, authorizing the city of Detroit to construct, acquire, maintain, and operate street railways and extensions, that the commission or other authority empowered to carry out the acquisition and management shall have no authority to pledge the credit of the city to obtain funds for the purpose, but only the earnings of the plant acquired, as security for any bonds issued.

Another objection to municipal ownership, especially under conditions existing at the present in the United States, is the difficulty in obtaining competent, efficient, and honest management. Efficient managers of large industries cannot afford to accept municipal employment at a low rate of compensation, and a sufficiently high rate will, under present conditions, afford too great an attraction to inefficient and unscrupulous politicians and office seekers. In fact, it has been the experience of many American cities that members of the city councils look upon city-owned public-service plants as affording places in which their political followers may be employed irrespective of their ability for the position, but chiefly on account of their value as ward politicians.

On the whole, under present conditions in the United States, at least, while, as Mr. Porter admits, there may be no contention but that municipal waterworks are desirable or even necessary, it would seem that each municipality should consider carefully local conditions, and carefully weigh all arguments for and against municipal ownership, before arriving at a decision in the case of any other industry. Probably in most cases better results can be obtained and unsatisfactory conditions more greatly improved through careful regulation of public-service corporations, especially by care in the granting of public franchises, than by extending municipal ownership. It would seem that carefully regulated public-service corporations afford most, if not all, of the advantages of municipal ownership, without many of its disadvantages, and also free the public from all risks of the enterprise and from dangers of increased taxation to offset any apparent financial benefit.

While the time may come, under changing economic conditions, when socialistic theories shall have been so far put into practice, and the general public shall have become so far "socialized" that general municipal ownership will successfully prevail, that time now seems to be quite far distant in the United States.

[21] "City for the People," p. 184.

Municipal Socialism

BY HON. EMIL SEIDEL

Mayor of Milwaukee

IF you follow the dusty country road, there, at a crossroad, stands a cluster of trees. Old, burly oaks and slender poplars, drooping willows, maples, and tall elms, reaching their many arms out into the air, rock slowly to and fro in the breezes.

Here stand assembled a few cottages with low roofs, surrounded by gardens, shrubbery, and flowers. A small schoolhouse with a spacious yard on one corner, and perchance a chapel with a churchyard in the rear.

Thus nestles the hamlet, modestly and quietly, under a blue sky and golden sunshine or the storm-swept heavens. Here municipal problems and policies are unknown.

And yet there is one problem. Beyond the hills, the forest, and the vales, there hangs low in the sky a heavy pall which at night assumes a lurid hue.

About the Modern City.

Under it rests the state metropolis, whose millions of mysterious noises lure the sturdy youth and fair maid of honest peasant blood, only to bury them midst the surging mass of contending humanity.

Here, in the city, neighbors know not neighbors. Those nearest to you are strangers. When tied down to your cot by pain, it is a strange hand that reaches to one the soothing lotion.

One passes from his little cottage or tenement flat in the morning, and after a day's strife returns in the evening without much chance for letting the lusty lungs send forth a warble in reply to the bird's songs.

The daily traveled road to the home now is a disease-breeding street.

Every gust of wind that sweeps down through the narrow avenues raises a cloud of dust that carries with it treacherous germs and blinds the eye.

Met at Every Step.

The offal that the kitchen yields and which at home went on the dung heap to be plowed under the fields, to give new life and nourishment to the growing crops,—here this same refuse reposes in the garbage can, emitting foul, nauseating odors under the bedroom window, being wafted by the gusts of wind through the back yards, over the porches into the doors, meeting you at every step.

There the curling smoke from the hearth is carried away by the pure breezes. Here the gases and soot from the factory smokestack and furnace cupolas hang like a gray shroud over the houses and streets, and hide the sky from view.

Some Contrasts.

There, in the country town, "the old oaken bucket that hangs in the well" yields the crystal fluid that gives new life alike to thirsty man and beast. Here, in the city, the water coming from the faucet is tepid and appears to possess none of the body and soul-healing qualities that were so refreshing at the pump.

There, around the home every square inch of ground, every depression in the road, every stone in the path, every nook and corner in the fence, and every distance, have impressed themselves indelibly upon the minds of the inhabitants, and the visitor treads as surely in the dark of night when no moon sheds light upon the scene as he would by day.

Not so in the city. Here, in every crevice, depression, doorway, lurks dan-

ger, treachery. And artificial light becomes necessary, adding to the cost of keeping the city safe. It is likewise with other protection, police, fire, and sanitary.

When at home in the country town a cesspool is sufficient to contain the human waste,—here in the city house drains and street sewers become necessary. And then the latter is not as safe as the former.

The little village can be traversed from one end to the other and back again within ten minutes' time. In the metropolis the problem of rapid transit confronts one, and the pavement must be cut with rails, streets lined with poles, and the space overhead cobwebbed with wires, all of which add to the dangers of city life.

There, by the crossroads, neighbor speaks to neighbor over the fences or across the road, communicating such bits of information, such words of cheer, and making such inquiry as fill the mind or press the heart and require relief.

Here progress provides the telephone, which, with its poles and wires, again adds to the unsightliness of the city streets and alleys, quite as often requiring the disturbance and destruction of costly city pavements.

In the country the little schoolhouse suffices as a town meeting place to discuss all questions of mutual interest, but in the city large structures, massively and elaborately built, become a necessity.

There the forest furnishes the fuel that feeds the little cannon stove, and radiates sufficient heat for the cottage, keeping out the inclement cold.

Here, the central heating plant, with its many mains and ducts under the street, places even the control of the temperature of the home in the hands of a stranger or corporation.

Here, in the city, the rivers and valleys must be spanned by costly structures of concrete and steel as a means to insure safety to the passer-by.

There the little babbling brook that runs over moss covered rock, under shady nooks, catches the scene from above and, holding it in its bosom, reflects it back with a crystal purity.

Here, in the city, the inky waters of a stream that ceases to flow and must be flushed, in order to remove its putrid and foul contents into the sources of our drinking water supply.

There, the care of the health of the child is in the hands of mother and nature. Here, the child removed from nature, is surrounded by all the poisons of communal life, necessitating municipal sanitation and care keeping.

There, the food and milk supply, drawn from the original source, gives strength and nourishment to the participant.

Here, the food carried over great distances, passing through many hands, artificially prepared and manipulated and only too frequently adulterated as a matter of profit, carries with it death and destruction, and strikes with particular force the weakest and most defenseless.

Some Recognized Functions.

The recognized functions of a twentieth century community are fire and police protection, which is given by means of departments; city platting and street building, cleaning of streets and rivers, collection of garbage, ashes, and refuse, sewage disposal and building of sewers; abatement of public nuisances, such as dust by means of sprinkling; abatement of smoke nuisance, noise, etc.; municipal sanitation and medical inspection; pure food inspection; providing of public and school buildings; supplying pure water and providing for parks, playgrounds, and breathing spaces, and many other minor functions.

While a modern city needs transportation, telephone, central heating, light, well-regulated fuel supply, regular supply of milk and pure foods, as well as many other minor facilities, yet many of these latter cannot be furnished by a city government because of existing laws interfering.

In some cases where the laws permit a community to do some of these things, these same laws make it so difficult to provide the means wherewith to do them that it is well-nigh impossible for a com-

munity to venture upon the performance of many of its duties.

In Hands of Corporations.

In looking over the list you will find that all those functions which must be performed by a city, and which will not render profits to the performers, are left untouched by corporations; on the other hand, you will note that services rendered to our citizens and the community which can be made a source of revenue are in the hands of corporations.

All these revenue bearing utilities enable the owners to erect magnificent structures and do a great many other things besides paying good profits. These profits should go to improve these utilities and render them more serviceable.

All the enumerated functions originally were carried on by means controlled by the users, but which to-day are not owned by them.

Municipal Ownership Question.

The question of municipal ownership is hardly any longer debatable. The great changes that have come over the modern industrial world are answering that question. . . .

Home Planning.

When in a rural district a man imprinted his individuality upon his home and its surroundngs, the result was not out of harmony with nature, because there nature predominates.

But in the city he can barely step from his porch, if indeed he is fortunate enough to have one, without getting onto his neighbor's premises.

In the country, individual home planning was natural. In the city it produces abnormal and injurious effects, and social or collective planning becomes a necessity.

City planning is not a new-fangled fad, but a sane attempt to adjust ourselves to changed conditions. Nor can the housing problem be properly solved until a sane city plan has been evolved.

Land speculation is responsible for miserable and frequently criminal platting. The prices of land are prohibitive, and will not permit a family with moderate means to buy more than to place a few square feet of shelter upon it. And the less fortunate worker can not even claim that.

Planning of homes is done only too often by inexperienced men, and then it so happens that the rooms that are most used can very often never be reached by the benevolent rays of the sun. Plumbing is not what it should be. Ventilation is entirely overlooked.

Food Supply.

To even the most superficial observer of conditions, these facts stand out prominently, *viz.*:

We know that a sufficient supply of wholesome and pure food is necessary to keep a body strong and healthy; yet we permit the supply of our food to be made the object of speculation and monopoly; we allow it to be adulterated; we leave the choice and preparation of it to the ignorant and only too frequently have not even learned to eat it properly.

Light and Air.

We know that our lungs need an abundance of fresh, clean air; yet we live in congested city districts; we neglect our back yards and let them become fruitful places for the spread of disease; we neglect the grasses that act as sponges which will hold and return to the soil waste; trees and shrubs which act as shields against the chilly winds are used only to a limited extent in the building of our cities.

Our men and women work in shops that very often are reeking with filth, and in which only too frequently our foods are prepared; we permit the cupolas and factory smokestacks to eject poisonous gases and soot into the atmosphere that we breathe.

Sunlight, which we recognize as a vital force in all life, we have shut out from our streets by means of skyscrapers.

And we are not yet ready to call a halt upon the insanity of speculation in construction of office buildings. Each owner of a small lot claims license to

build as high as he chooses without regard to sunlight or air.

City Planning.

City planning and building must become a collective function instead of an individual enterprise.

City planning and its analysis, then, involves all that a city and a city's people need,—transportation, telephone, communication, light, water, and heat supply, factory location, and innumerable other functions and duties.

Nor need this sound chimerical. Are we not already controlling many of these things in a greater or lesser degree?

Besides this, we also have already encroached upon the prerogative of the individual by exercising in every well-regulated city control over the source of milk and food supply, health, and sanitation, cleanliness of private premises, individual habits, moral and physical welfare of the child, etc., etc.

And that city stands as a model which is farthest advanced in all these activities.

Someone will interpose that a city cannot operate all these enterprises economically. Graft would be rampant among officialdom; waste would be the order of the day; taxes would be higher; and more of these stock-in-trade arguments against municipal ownership. They are too well known. But have we stopped banking because many banks have failed? Is it not true that more concerns have failed in every one of your older cities than are in existence in them to-day? And yet you have not discontinued private enterprises.

Origin of Graft.

If there is graft in public office, is it not due to the influence of men in private business? When a man gets into trouble the French say, *Cherchez la femme*. "Look for the woman." When an American official gets into trouble we can very pertinently say, "Look for the business man."

As for waste—the expense of waste imposed upon a people by competitive enterprise is far greater than the waste in public offices.

And what about the tribute exacted by corporate wealth from our people, as compared to the taxes we pay for government? I pay a higher tribute to the meat trust alone than I pay in taxes.

But these are only retorts that do not get at the real evil.

If graft, dishonesty, taxes, and waste are ever to disappear, it will be only under a system in which social economy will have come into its own.

Many Lessons Ahead.

I hold that for efficiency in municipal governments it will not be many years until these will be able to teach many a private enterprise some very necessary lessons.

In my home city the past administrations have not met with so much opposition as the present one, though the latter has succeeded in reducing the cost of asphalt paving from $2.35 to $1.55 per square yard for the same kind of paving. And, with all waste eliminated, the price was brought down to $1.26 per square yard.

All along the line the same earnest effort is made, and many good results have crowned our endeavors.

Fortunately, the signs that cities are improving in the art of government are increasing. Before we can secure to the people their city, we must see that its government belongs to it.

Like Piece of Machinery.

A city government may be likened to a piece of machinery. Though the word "machine," applied to a government, excites an odium, a machine in itself is neither bad nor good, but the use to which it is put places it in its class.

A government is an organization to facilitate the government of a people.

Let this machine squander public moneys, let it lavish franchises, let it interpret laws to favor a clique, it then is bad.

However, if the government carefully surveys the problems that a people are grappling with, if it will use its power and its resources to aid the people in meeting these problems, then there can be no question as to its mer-

its. And the stronger the organization of such a government, the better for the people.

Must Specialize.

Only too often office is held by ambitious men to be a means by which to climb to higher position and power.

In these days, when government has become a very intricate science, it is quite as necessary to specialize in this art as it is to specialize in all other arts and sciences.

A man cannot be a good alderman, mayor, congressman, governor, senator, or president all in the short space of fifteen to twenty years.

The first task of any administration must be to place its government in a fit condition to measure up to the job which it is supposed to do.

This task is not an easy one, with the many difficulties that the financing of a city's work carries with it. Revenue, taxation, assessment, accounting,—each in and by itself are problems that put to test the ablest of men.

Then it is necessary to organize each department to such a degree of efficiency that a community derives the greatest amount of service with the least expenditure of energy and money. No government can measure up to the proper standard unless this feature is carefully watched.

The best practice and equipment is none too good for a city.

Municipal Machinery Complex.

As the activities of a municipal government are of the greatest possible variety, so its working apparatus must naturally be a very complex one.

Therefore, it is a frequent phenomenon to see a municipal government tied down with legal requirements that in civic life could not endure a month.

Many a man has begun his career in public life with high ideals, and after a heroic struggle quit disheartened.

To go to a legislature to secure enabling laws is in itself a huge work.

When one considers the many activities that a city must engage in it is surprising that not more mistakes are made.

In addition to the many physical improvements that a city government must handle, there are added the more intricate problems resulting from the social need of a city population.

Able Men Needed.

In all this work a city should be able to acquire the very best that education, experience, and practice develops.

But there are not enough of these best men to go around. Especially so, if one takes into consideration that as fast as they are produced they are gathered into the folds of some corporation that specializes in one thing only.

The best lawyers in a city will not be found in a city hall, because such a city has not the means to pay them what they can get elsewhere.

The best engineers need not throw themselves upon the whimsical mercy of a fickle electorate. This applies to accountants, technical men, and experts of all kinds. Yet there is no need of despair on the part of friends of good government.

It is only natural that when we find ourselves surrounded and overcome by difficulties we should look for the easiest way out.

Change Avails Nothing.

When suffering from the effects of bad government, the first question raised is the merits of form. To change a form meets with far less opposition than a change in policy and spirit. Yet a change in form without a corresponding change in principle avails nothing.

I hold that with all offices at the disposal of the people, filled by men who are bent upon progress, our present form of either national, state, or municipal governments could not stand in the way of advance.

Therefore, I have not much time to fritter away over reform. The real evil is not so much in the form as in the spirit.

The people of my home town have elected into power a set of men with new ideals and possessing a social conscience.

To-day the cry for honesty in city government is not raised in our city.

Honesty is presupposed. It seems natural.

For example: Though honesty is a high moral attainment, yet it is fearfully weak without a material basis to soundly stand on.

Again, with such a basis, honesty is but a very commonplace phenomenon. A man will naturally be honest to a business enterprise, if he is the owner of such a business.

When he is after a franchise, nobody could bribe him to accept less than the franchise.

Wants Whole System.

Just so, if a man is after the possession of a railroad for all the people, he cannot be induced to desist by a bribe of $100 or $1,000. He wants the whole system, not a part of it.

Therefore when you place a man in office who is after a big thing you cannot tempt him with small things.

The present administration of Milwaukee is after the means of production and distribution as a means that the people use to procure a living.

Since we are after big game it is necessary to prepare ourselves by securing the very best government that it is possible to get. And this we, again, can only achieve by getting the best advice that money can buy.

Realizing the wisdom of such a policy, the inaugural address of the mayor to the common council contained the following admonition:

"In your policy the promises contained in our platform should have a prominent part." Then followed specific suggestions, *viz.*:

"Proper action looking toward the establishment of a bureau of municipal research should immediately be taken. An expert should be called in to advise with you on this subject.

"The first object of this bureau should be to make a municipal survey, to furnish adequate and accurate knowledge of social, industrial, and economic conditions leading to specific and practical plans for city government."

Discover Losses.

"A complete cost-keeping system for every municipal department should be established, distinct from an accounting system. Such a system would enable anyone to discover leakages and losses, whenever such existed.

"The survey should extend to other subjects, your action being directed to such as are of immediate importance and calling for first attention.

"This will enable you, in a short time, to place the finances of our city on a sound and sane basis, fix a more equitable basis of taxation, and arrive at basic cost units that will be of great service."

The common council took action and passed the following resolution less than two months after the inauguration:

Resolved, That the committee on finance of the common council be and is hereby directed to investigate the system of accounts of all departments of the city of Milwaukee, and the operations and activities of all departments and powers granted to the city of Milwaukee, which committee shall submit to the said common council for adoption a complete system of uniform accounts, vouchers, and other forms that may be necessary or convenient for carrying out such system and recommendations for rendering more efficient and economical the administration of the city.

Resolved, further, That such system shall be centralized in the office of the city comptroller, and shall show in detail, according to appropriate standard units of product or service, the cost per unit, based on standardized equipment, stores, contracts, and specifications, and to arrange for the payment of their necessary expenses, whether incurred in Milwaukee or elsewhere.

Resolved, further, That the sum of $5,000 be and is hereby set aside from the contingent fund to carry out the intent and purpose of this resolution.

Countersigned, June 14, 1910.

C. P. Dietz, Comptroller.

Preceding the passage of this resolution, overtures had already been made for a man in whose charge to place this work, but it was some time later before we succeeded in securing the services of Professor John R. Commons, who is now the director of the Milwaukee bureau of economy and efficiency.

An efficiency survey is covered under five distinct headings:

First. Operating processes or activities primarily of mechanical or technical nature. This, again, is divided into three subclasses,—construction, maintenance, and operation.

Second. Business transactions, or activities involving primarily the transaction of business. This was divided into three subheadings,—business procedure, financial procedure, and employment.

Third. Accounting.

Fourth. Organization under four headings,—general, plant, field, office.

Fifth. Administration.

Out of it all should follow efficiency units, *i.e.*, material efficiency, personal efficiency, and efficiency of processes.

Staff Consists of Experts.

The regular advisory staff of the bureau of economy and efficiency is so organized as to include experts in engineering, accounting, law, business organization, labor organization, and municipal administration.

I think I can safely say that this experience in city administration stands unique in the history of American city governments.

While it is true that there are other cities that have efficiency bureaus and surveys, yet in all these instances such bureaus are conducted by private enterprise; and many of these institutions find it difficult to have their suggestions considered or adopted.

It must be clear to any fair-minded person that under such conditions the best results cannot be obtained. In this day no city government should be without such a bureau. We are getting splendid results.

From the first bulletin of the Milwaukee bureau of economy and efficiency, it will be seen that the bureau considers its duties to be twofold,—one, the social survey; and the other, the efficiency survey.

Seek City Needs.

The former attempts to discover the needs of our city and its people, and measure the efficiency or discover the inefficiency of city government.

The latter makes a thorough study of the work performed by each department for the city, and is to be followed by a reorganization of procedure along lines of the greatest economy and efficiency.

Of the social survey the report says: "The social survey is not an exhaustive investigation, intended to expose conditions or to furnish material for social philosophy, but a means of measuring the efficiency or discovering the inefficiency of city government.

"It is based on the principle that the municipal government is a social corporation conducted for the health, welfare, and prosperity of its inhabitants.

"Consequently, the measure of its efficiency is the extent to which it makes its resources go in promoting health, welfare, and prosperity. These are its dividends."

Will Come to Its Own.

With a government organized to be used to its fullest capacity at the disposal of a people with high aims, there is no doubt in my mind that mankind will yet come to its own. . . .

Upon the memory of the days of my childhood, I draw for a picture. A prophet was taken by the hand and carried out and set down in the midst of a valley covered with dry bones.

The prophet passed through them. He observed that there were many of them strewn in the valley and that there was no life in them. A voice asked: "Can these bones live?"

The reply he gave was, "O, Lord God, Thou knowest." Again the voice spoke, commanding, "Prophesy," and the prophet spoke; there was a noise and shaking, and the bones came together, and sinews and flesh came upon them, and skin covered them, and there was a wind, and a breath came over them, and they lived.

When confronted with actual conditions you may find yourself in a position similar to that in which the prophet Ezekiel found himself. But you must raise your voice, and you must prophesy and you must teach and you must command, and soon there will be a noise, and a shaking, and men will come together, and new ideals will form and new ideals will take possession of the masses, and once more they will begin to live.

Suggestions for Municipal Government

BY HON. FRANK K. MOTT

Mayor of Oakland, Cal.

[Mayor Mott, executive of the largest city in the United States under commission government, discusses the advantages and possible disadvantages of the "commission" form, and makes tentative suggestions as to practical methods of retaining the benefits while guarding against the pitfalls.]

WE have noted a widespread unrest in American cities. Everyone deplores a want of business methods. There is no confidence that the taxation is compensated by a judicious, economical outlay in the public interest.

So we have an attempt to break away from old forms of municipal government, in the name of a greater democracy and a higher efficiency. The one leads to the recall, the initiative, and the referendum, the other to the so-called "commission form of government."

Neither of these expedients has been sufficiently tried to justify the belief that they will be sufficient of themselves. Hardly more than a third of the registration is represented at the polls, even when vital amendments to the Constitution of the state are to be passed upon. The city of Oakland, in California, the largest to adopt anything like the commission form, has been operating under the system but a few months, so it seems, at least, premature to expect all desired benefits to flow from these devices alone.

Sound business principles similar to those of the great industrial and mercantile establishments of the day, coupled with the education of the people, are indispensable to a measure of efficiency and of progress in municipal affairs in keeping with the general spirit of the times.

We are accustomed to point with much pride to the wonderful strides our cities have made in population and in many material departments. And if by chance a visitor from the old world ventures to suggest that some matters municipal are still rather crude with us, we take refuge in the countersuggestion that we are young yet, and that Europe has many centuries the start of us.

Europe Ahead of Us.

But the continental cities of Europe have grown as fast as ours, and many of those cities are vastly ahead of us in the solving of material and other municipal problems which they have taken up as lately as we have. Taking the German cities for example, Berlin is comparable with New York, Philadelphia, and Chicago; Hamburg, with Boston and Baltimore; Leipsic, with St. Louis and San Francisco. At the same time, they have met the requirements and afforded many of those modern benefits on which we pride ourselves, far more economically and more perfectly than have we. It behooves us to study their methods in order that the underlying principles may be adapted to American genius and American conditions of life.

We should be the leaders and teachers of the people. We must no longer shut our eyes to the hideousness of much of our architecture; to our haphazard care of streets; to the absence of parks and playgrounds; to the want of shade trees

along our thoroughfares; to the unsightly and dangerous array of poles and the shutting out of the sky by networks of wires; while, at the same time, we must also strive for more perfect and sanitary conditions; for better transportation; for purer and more abundant water; for gas and electricity for domestic and industrial uses; for more and better schools; for the development of business interests.

As we all know, Paris is beautiful. No question of cost long stands in the way of a systematic beautifying or of a needed sanitary reform. Devotion to art for its own sake leads to the demolition of whole squares of unsightly buildings; to the straightening of crooked streets or the adoption of curves of beauty; to laying out of broad boulevards; to lining thoroughfares with shade trees till they are themselves recreation grounds; to forming of grass plots and flower beds and public squares; to erection of noble public buildings and monuments; to regulation of private architecture; and, especially, to scrupulous cleanliness of the streets. These things they have done, primarily, for the benefit of Parisians themselves, and they have their rise largely in our own times, and result from the application of the most recent discoveries in science and in the mechanic arts.

What is true of Paris,—the typical city—is also true of many of the continental cities. Says Albert Shaw in his "Municipal Government of European Cities:" "They stagger under such heavy burdens of taxation and compulsory service to maintain the military arm of the general government, that the tax increment which can be spared for municipal purposes comes with pain, and is small compared with the revenues we can raise for outlay in America, where taxes for national and state purposes are comparatively light, and yet, in the face of the disadvantages far greater than any that we can present as excuses, the German cities have grappled with the new municipal problems of the last quarter of a century, and have solved them far more promptly and completely than the American cities have done."

"German municipal financiering is a high art,—it unites thrift and minute economy with broad liberality,—and the people are ready to bear burdens of taxation for the boon of an exemption from febrile diseases and a reduction by one half of infant mortality."

Foresight Needed.

To a large degree we work in this country in virgin territory. In the European cities it is often necessary to destroy vast accumulations in order to prepare the way for the new construction. With us all is new and what is called for is mainly *foresight*. We may build, at far less relative cost, but even that charge will often seem excessive to our people, unaccustomed as they are to large contributions for public uses. But there are great public works which we must attempt in the interest of the people, and we must have their fullest interest with us if we would succeed. Development and progress along modern lines require large expenditures, and the people must be brought to an understanding of the necessity and to a willingness to pay for them. To this end they must have confidence in the plans and in the execution of them. To secure and to maintain that confidence you must have efficiency in government.

Now the study of municipal efficiency brings us irresistibly to a contemplation of the work of the German cities. If those cities stand for anything, it is this, —*efficiency in municipal administration*.

So, then, let us seek out the element which most contributes to efficiency. Is it, as some have suggested, one of national temperament alone? Or is it based in some generic principle which we may adopt and apply, with suitable modifications, to our own necessities?

The German systems are not uniform, but analysis shows that they all possess certain characteristics readily recognized.

First, all German municipal governments are empowered to do whatever they may deem necessary or advisable in the interests of the city; provided, always, that it is not contrary to any law of the land. *This general grant of powers* to the cities is one of their most salient characteristics. Whereas, in the United States, a city may only do what it is expressly empowered to do by law or by statute; in Germany, cities may do

anything which they are not expressly prohibited from doing, as by veto or by some law of the higher powers. This is thus stated by Albert Shaw: "The functions of the German municipal government cover an immense range of human and social interests. They embrace not only education, but provision for amusements, including theaters, and other spectacles and shows, a training for livelihood, care for the health of families, for the moral interests, and the promotion of individual thrift, protection from misfortune, provision for employment," and a regard for almost any and every concern of human existence as it may arise.

Second, there is the Emperor, present by his representative at all times, and there is a municipal council composed of a large number of citizens elected by the people, who are classified into three great divisions, based on taxation, which council chooses the members of the administrative body, which latter body is, third, the executive arm of the government.

Now all these components are so interrelated that the national purposes and policy of the Empire, the wishes of the wealthy classes, and the feelings of the common people, culminate in local action with rare precision and immense power, as well in matters of detail as in matters of magnitude.

An American visiting a German city is at once impressed by the many things that are forbidden, and by the minute inquiry into the domestic affairs of the people. He resents what seems to him like spying and restraint. The American wishes to encounter his government only when he has a favor to ask, but the German has his government always with him. It is ever on the alert to protect him against the encroachments of his fellows; against their carelessness or their wilfulness; but also to protect him, if it be possible, against the consequences of his own indifference, carelessness, or ignorance. The government knows how to perform all these varied functions, because of a combination that affords an intimate knowledge of the needs of and the wishes of the people,—expert officials trained to a practical way of meeting and solving them, and an executive department, prompt, respected, and powerful.

Composition of the Magistracy.

Now one of the most obvious characteristics is the composition of the administrative body called "the magistracy," at the head of which is the burgomaster, and the relation of this administrative body to the municipal council. It is practically a commission form of government somewhat similar to that proposed for American cities. It is a body of immense authority and dignity, compact and always ready for action. It is composed of paid and unpaid members, the former, experts in their several lines, never chosen save for their technical skill or their previous experience; and the latter, at least required to be men of general capacity and usually of considerable experience in public affairs. Of this body Albert Shaw speaks as follows: "The burgomaster and the magistrates are the most highly trained experts that a German city can secure. The burgomaster is an expert in the general art of municipal administration. Associated with him in the magisterial council are experts in law, experts in finance, experts in education to administer the schools, experts in sanitary science, experts in public charity, experts in forestry and park management, experts in the technical and business management of water and gas supplies, and so on."

Term of Office.

The term of office is from six to twelve years, with privilege of retirement on half pay after twelve years of service or of re-election. (It is stated that three members of the Berlin magistracy have served nearly forty years in that capacity.)

The members of the magistracy are chosen by the municipal council and, in case of the paid members, are often advertised for, and taken from other cities where they have had experience in municipal affairs. The council also elects the burgomaster, but the choice must be ratified by the national representatives. He corresponds to the mayor of American cities, but is without many of the powers usually conferred upon the American mayor. He is the chairman of the magistracy, and in that sense is the head of the government, but in other respects

is the equal of the other magistrates. Meetings of the magistrates are held in private, and while the results of their deliberations are fully disclosed, their discussions are not made public. They report to the municipal council. The magistracy appoints all subordinates on a basis of fitness, and for life. In it both the honorary and the compensatory principles are combined with the long tenure of office. It becomes amenable to the people through the municipal council, and is also subject to the control of the national authorities in certain ways. Nevertheless, the magistracy is the dominating body by reason of the fact that its term of office is long, while the council changes frequently in membership; and also, because it prepares the business to be transacted by the council. It is generally recognized as the superior body notwithstanding the anomaly that its membership is derived from choice by the other body, the council. It has sometimes been compared to the Senate, or to a board of aldermen in this country, and to the House of Lords in England; but, while in those two countries the so-called higher body is really becoming inferior in legislation, in Germany the appointed body continues to take precedence over the one to which it owes its origin in membership. Still, it must not be supposed that the council is without influence on the magistracy, or that the people are not felt in its deliberations and in its acts. But at best, the people have only an indirect voice in the choice of those who are to administer the law.

Now this analysis shows that the German system is not a government by experts, nor a government of experts. Experts indeed are made use of in excellent fashion, but every component of society is active in control of the experts. Were this not so the "officialism" so much complained of by strangers visiting Germany would be far more offensive and even intolerable to the German citizens themselves, notwithstanding their ready submission to official authority. In all lands experts are often specialists who are easily carried away by professional zeal and betrayed into want of perspective, into loss of sense of proportion, and who, in ardent pursuit of the things dear to their own hearts and of which they are technical masters, allow other interests to suffer. The balance is maintained in the German system by the association with the experts of men nonprofessional, by the influence of the council, by the conjoining of citizens in various subsidiary commissions of which the magistrates are the *ex-officio* heads, and by the relation to the national representatives.

Election of Experts Impracticable.

In America several conditions seem to preclude anything like a government in which experts are to play the principal part. The German system is often referred to as ideal. But, as we have seen, these experts who play so large a part in the administration of law in Germany are not elected by the people whom they so largely govern. The American tendency, however, is more and more to the direct election by the people of those who shall have administrative functions to perform. In Germany, those who are elected are not the administrators, although they appoint them. The method of the election of the municipal council is based on a property qualification, which confers suffrage upon corporations as well as upon natural persons in proportion to taxes paid, and it is utterly abhorrent to Americans. Unquestionably, it would be better for our own people to elect to office men who have had experience, and to employ technical skill of the highest order in administration as well as in council. Not that it would be well to give free rein to the specialist, for then a single department might absorb the entire revenue of a municipality. But there is little danger of such a calamity. But we cannot yet depend upon the choice of experts by the electorate of our American cities. Personal popularity is still the principal factor to be reckoned with. Surely, the people should be educated to see the advantages to themselves of having men of experience and training at the head of their municipal governments. But this choice by the people we may not look for with any certainty unless none but trained candidates become eligible. As we well know, matters of reason, of judgment, of principle, rarely call out

more than a minority of the electorate, and it is in fact a warm contest that secures a total of more than 60 per cent of registration. Then again, the desirable specialist and expert would seldom be a good canvasser. He would seldom be willing to submit to the hazard and the labor of a strenuous campaign for an office whose maximum term is short, and whose term might be still further shortened by the recall.

A lengthy tenure of office is also unpopular in America. Rotation in office is almost a fixed principle with our people.

How, then, shall the situation be met?

As to subordinates, we need have no fear, for a suitable system of rewards and demerits will soon take care of all difficulties from that quarter. The heads of departments can be kept alert and active by other means.

The experience we have already had with the commission form of government develops a necessity to apply something answering to the work of the municipal council. Direct legislation by the electorate, except in the most important matters, is too cumbersome and too expensive. Frequent elections are wasteful, besides being irksome to the great mass of voters. The expense might be reduced by making service at the polls compulsory and gratuitous, if such a measure would be tolerated. Confidence in the integrity of public officials and in the economy and the efficiency of administrations would diminish greatly the desirability to resort to the initiative, the referendum, or the recall, and they would be left as rare expedients of extraordinary occasion.

A multitude of questions or proposals, of protests, and of other demands for public hearings, continually arise in the administration of the affairs of a city of size. They consume a vast amount of the time and energy of the government. Unless some relief from them is to be found, practically the entire time of the commissioners should be given to the transaction of the public business. Yet few of our cities would be willing to pay salaries commensurate with such service by trained experts. It often becomes necessary to defer hearings, to have as much as possible put in writing that it may be considered by the commissioners in private. Many subjects might profitably be referred to chambers of commerce, bankers' institutes, improvement clubs, to taxpayers' associations, for advice, for commendation, or for condemnation. The review of the acts of the administration by such bodies might often help to secure public support for the government. That government is strong which has the people with it, and if popular approval can be secured without too much machinery, the better for all concerned.

Citizens' Council Recommended.

The spirit of the German system may be incorporated with the hoped-for efficiency of the commission form, to which our cities are now committed; and the true value of the initiative, the referendum, and the recall secured. Let us have an *official council* drawn from the voluntary bodies, such as have been named, with others, and with the addition of a constituency from among the citizens at large. In the smaller cities it might be composed wholly from the general body of citizens. Let it be, however, a thoroughly representative body. Such a citizens' council would have no administrative or appointive powers, so that the question of patronage would never enter. It would have full *inquisitorial powers*. To it the elective council of commissioners would report. By it broad questions of policy would be discussed, and it would make recommendations to the executive body and pass judgment upon the acts of that body. It would be of considerable size, and service upon it would be compulsory and purely honorary. From it should be drawn the candidates for election by the people to the administrative council or commission. In the larger cities one half of the members might be delegated by the various voluntary bodies, and the remaining half conscripted by the superior court, as is done in the selection of grand jurymen, or by the commissioners drawn by lot. The term of service would be not less than a year, a third to go out of office at a time. Meetings would be held not less than once a month or as often as desirable. Attendance at

meetings would be compulsory except for good reason. From among its members might be chosen the constituency of various subsidiary commissions, such as those of parks, of libraries, of streets, of schools, of police, and sanitary matters and various others. Thus, in addition to its other uses, a large body of citizens might be actively interested in public affairs in a definite, because in an official, manner.

A body like this, nonpartisan and fully representative of the varied interests of the people, would serve as a most sensitive medium to test public feeling and public opinion. The members would carry the discussion of every question into the very homes of the people. Their commendation would strengthen the administration and leave it free to begin important works for the public good, in certainty of appreciation and with the reasonable hope that it would be left to complete what it might begin.

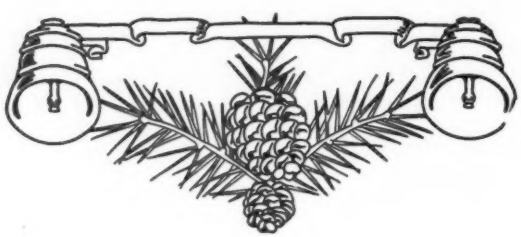
It would be safe, under such conditions, greatly to enlarge the discretion of our city governments. A charter might be made a true constitution for the city government,—a statement of broad principles and a grant of a wide discretion somewhat approaching the German fundamental scope.

Choice by the people for the elective offices of none but those who have served their year in the citizens' council would provide a degree of expert composition for the administrative body. The executive commission would carry the principle still further by the appointment of none but experts to important positions, and by making fitness a test for appointment or for promotion in all cases.

Except within some such limits as have here been set forth, it seems impossible to expect that the German expert system can soon become acceptable to the electorate of this country. And yet the limits suggested are sufficiently broad to secure the best of the German spirit, without that inflexibility of officialism and bureaucracy which, in the end, would lead to certain overthrow.

In conclusion, I would say that the governments of our American cities have much to do to raise the standard of civil life in affairs material, social, and moral. We have made but a beginning. It is our duty to educate the people to their privilege and their opportunity. We must take the lead, and to do this, must develop our own foresight. We need to make our administration efficient, economical, and at the same time, broad. We must demand much of the people, and they have the right to demand much of us.

What we need above all is to turn on the light. Let us stand in the light. Let us know the purposes of the people, and let us acquaint them with what we are doing and with all that we would do. Publicity is absolutely demanded, for publicity is at once the deadly foe of error and wrongdoing an dthe most potent support of right intent and welldoing.—Reprinted from The California Outlook by permission.



Legal Aspects of the Plan of Chicago

BY WALTER D. MOODY

Managing Director, Chicago Plan Commission

AMERICAN cities to-day stand at the threshold of the science of city building, awaiting a citizenship to seize upon opportunity that will give the nation the mastery of the world's commerce, art, and science. The time for molding the destinies of American cities has arrived. All the elements of nature and all the agencies of civilization are vying with each other in suggesting progress in citizen making and city building. Because it affects millions now unborn, the greatest issue confronting any large and growing community to-day is a scientific plan to direct the growth of the city in an orderly way. Such is the plan of Chicago, now being promoted and developed by the Chicago Plan Commission, backed by a harmonious city administration. As in nearly all American cities, Chicago is hampered in carrying out its plan by legal limitations. American municipal corporations should enjoy the legal latitude of the city of London in the matter of excess condemnation power, a good example of which is afforded in that city in the improvement of King's Highway. This thoroughfare is located in the heart of the city; the gross cost for its improvement for a distance of less than a mile was $24,000,000; the net cost less than $4,000,000, the great saving involved being due to the city's power to condemn property in excess of the needs for the improvement, and to resell abutting property at appreciated values after the improvement is made. The city of Chicago is engaged at present on two street widening cases where, if it had excess condemnation power, these improvements could be made without costing the city a single cent.

The constitutional excess condemnation amendment of the state of New York, voted upon by the people at the November election, exactly provides the precedent for the enactment of necessary legislation for every other state in the Union. Again, the city of Chicago is hampered in broadly making public improvements by the city's bonding power, which is limited to 5 per cent of its assessed valuation. The legislature could authorize a higher annual tax, but could not, under the Constitution, increase the limit of indebtedness, unless by means of some change in the method of assessing property on which the limitation was to be computed. The remedy for this must be found in a new city charter which will provide for increasing the bond issuing power of the city by changing the basis of computation of the limit of indebtedness.

The theory has been advanced that an entirely new taxing body could, with the consent of the voters, be created by the legislature, having jurisdiction over all or part of Cook county. That body, if properly constituted, could be invested with power to levy such taxes as might be deemed advisable, and with power to issue bonds up to the constitutional limit of 5 per cent of the assessed valuation. It is also to be borne in mind that by some slight changes in the method of fixing the assessed valuation of property, which is now arbitrarily defined as one fifth of the full valuation, the legislature could largely increase the borrowing power of all the taxing bodies.

Large improvements need not only extensive borrowing powers, but the distribution of the burden over a long se-

ries of years. While twenty years has been heretofore deemed the limit of time which ought to be allowed for paying any debt incurred by the issue of bonds, it may be thought that the radical changes contemplated by the plan of Chicago are of such unusual magnitude and of such permanent character that justice might demand distribution of the burden over more than one generation. Upon that view, bonds running for a longer period might be thought reasonable. The present constitutional limit of twenty years, however, is absolute, and an amendment to the Constitution would be required to enable any municipality to issue bonds for a longer term.

In the opinion of the best legal minds, to give the city a free hand in controlling the environs of a public place, the authorities should be invested with power to acquire the actual title, and then to dispose of it subject to such restrictions as might be deemed expedient. This course offers the double advantage of giving the public agency absolute control of the future use and improvement of the surrounding property, and of enabling it, if the price of acquisition is not too great, to recoup in some measure the cost of the improvement by selling the residual title. Neither the state, through its legislative department, nor any subordinate agency of the state, can take a man's property against his will, under the power of eminent domain, merely for the purpose of giving it or selling it to another man. Such taking would not be for public use and would violate the state and Federal Constitutions. It by no means follows, however, that a state agency, exercising the power of eminent domain, is always forbidden to derive profit from the sale of property not found to be actually needed.

While there is a dearth of modern authority on this subject, it is believed that the courts would sustain the position of an owner who refused to surrender his property in order merely to diminish the cost of a public improvement. Such enactments, however, though void as to an unwilling property owner, are valid in so far as they confer authority on the city to take and pay for the whole parcel with the owner's consent, and to spend the people's money for that purpose. There is probably no constitutional obstacle to legislation investing a city, park board, county, or other appropriate agency with power to condemn as part of or supplementary to a public improvement such contiguous area as the reasonable needs of the improvement itself might require to be subjected to proper restrictions; nor could such a law be condemned by reason of its also authorizing the sale of the land subject to such conditions or restrictions as the public authorities saw fit to impose upon it.

City planning is by no means a small undertaking. It is the crystalized product of years of effort in countless lines of improvement work. Its most ardent exponents admit that thus far the subject is still in its infancy, and that many problems remain to be solved. But comprehensive city planning has been sufficiently tested to prove its real value, and to point out the way for the only perfect and complete development of ideal communities.

—Richard B. Watrous.

Editorial Comment

"Municipal government is the problem of the age. It touches us in our daily lives a dozen or a score of times while the State or National government touches us once."—C. F. Taylor.

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Edited by Asa W. Russell.

The Milwaukee Experiment.

FOR the past year and a half public attention has been largely centered upon Milwaukee, where municipal problems are being dealt with in a unique way, and efforts are being made to place municipal administration upon a scientific basis.

Economy and Efficiency.

Milwaukee has an official bureau of economy and efficiency, created a year ago and put under the direction of Professors Commons and Rastall of the University of Wisconsin, which is said to have saved the city already a quarter of a million dollars on paving contracts, and many thousands of dollars on garbage disposal, to have effected economies in many other matters, and to have laid the foundations for efficient city business procedure in the future. This is an excellent example of what may be done by such a body.

Official bureaus of this sort were established in 1910 in Atlanta, Baltimore, Boston, Milwaukee and St. Paul. Privately maintained bureaus exist in several cities, the first having been established in New York in 1906. Some cities, like Chicago, have both kinds. All these bureaus have demonstrated their usefulness and have shown that there is a large field for permanent work.

Every city in the country, it may be presumed, will have such a bureau, official or unofficial, in a few years, for the American taxpayer is coming to demand more business and less politics in the handling of municipal affairs.

"When you throw a lot of potato peelings, meat bones, egg shells, and other scraps into the garbage can in Milwaukee," says La Follette's Weekly, "that is not the last of it for you. A few months later you may stand in a building the foundation of which is composed in part of the stuff you threw in the garbage can.

"No mystery at all in this. The garbage wagon comes along at midnight and hauls your refuse to the incinerator,—a row of big furnaces in a building on the lake shore. When these hot furnaces are done with your potato peelings, etc., mixed with ashes and rubbish, it has been changed into

"clinker." Put this clinker through a crusher and you have a material which is better adapted for foundation concrete than crushed rock."

Two big things are under way and partially accomplished by the Milwaukee bureau, writes Mr. Carl Sandburg. They are devising a cost system. This will tell just what is cost and what is not cost in the city departments. It will show where the possible leaks are, and will point the way toward improved service. A graft government in connection with this kind of a cost system is impossible.

Social Survey.

For another thing, this bureau is making a social survey. Facts are being collected and classified with recommendations for action, relating to workmen's accidents, free legal aid, free employment offices, women's wages, housing conditions, recreations and amusements, health and sanitation, milk supply, and other subjects.

In co-operation with the city administration and civic organizations, commissions have been appointed on tuberculosis, child welfare, and milk supply. The groundwork is now being done on a program for fighting back the ravages of consumption. Already more hospital and sanitarium facilities have been placed at the disposal of advanced cases of white plague sufferers.

The child welfare commission has taken one district, and is there going to prove that, by the education of mothers in the care of babies and by proper medical supervision, with the aid of visiting nurses, the high death rate among babies can be cut down.

University Extension.

On the second floor of the city hall is a door with a sign reading, "Municipal Bureau—University of Wisconsin—Extension Division." This room, rent free, was offered to the university. So, now the workingman who wants his boy to have a technical education—or any other valuable course of home study—can send his boy to this bureau, and he will get the equivalent of a university course with most of the advantages he would have in Madison, while at the same time he has the advantage of living at home.

Free Lectures.

The common council chamber, being seldom used evenings, was tendered for a lecture institute under state university auspices. Mayor Brand Whitlock, Francis McLean, Lawrence Vellier, Dudley Foulke, and a number of famous writers, speakers, and scholars gave educational talks. This free lecture course was attended by hundreds of earnest students who eagerly availed themselves of the opportunity to advance their education. Afternoon and evening classes in municipal and sociological subjects were also carried on. Registration was free.

Million Dollar Park.

A million dollars is proposed to be spent for beautiful wooded tracts of land along the upper Milwaukee river as a big park. With more park area always goes better health in a city. Instead of having this river valley follow the development of the Menomonee river valley in Milwaukee, and become an ugly, ill-smelling, smoky, dusty, sweating ground for human beings, it is proposed that this one most beautiful spot in the city shall be devoted to the health, pleasure, and life of the public.

Municipal Mausoleum.

The Milwaukee administration, according to the New York Sun, is turning its attention to a project for a vacuum burial crypt with a capacity of 1,000 corpses. The plan is to substitute those mausoleums for cemeteries, and thus save the land used for the interment of the dead.

A company in which members of the administration are interested, and which may be taken over by the city if a bill now in the legislature to authorize the municipality to conduct co-operative cemeteries passes, has been formed, and plans have been drawn for the erection of the first of these vacuum crypts.

The individual compartments will be separated by 4½ inch walls of concrete and steel, and the foundations beneath

the crypts will be 8 feet thick. The interior compartments are thus made substantial, and they are separate from the building, insuring their permanency even though repairs to the building become necessary.

The impossibility of removing a body by stealth from the mausoleum, which is to be kept open at all times, is obvious, for the sealed covers of the vaults could only be removed by immense force, because of the great air pressure. The bodies are to be placed in these crypts, the entrance sealed, and the air exhausted, thus preserving the body, it is said, so there is no deterioration whatever.

"It practicaly mummifies the body," explained one of the promoters.

It is proposed to put depositories for ashes in the building, and the charter of the company allows it to construct a crematory.

Law Department.

The Law Department of the city of Milwaukee is in charge of City Attorney Daniel W. Hoan. During the past seventeen months this efficient officer and his staff have compelled the street railway company for the first time to sprinkle the streets between their tracks in accordance with the municipal ordinance. He has also compelled that corporation to pay yearly license fees amounting to over $8,000 a year, and to pay for pavement between tracks in accordance with franchise provisions.

The city attorney has actively prosecuted cases brought by other departments, involving housing, health, sanitation, weights and measures, smoke nuisance, selling of liquor to minors, loan sharks, and illegal employment offices.

He has prepared more than forty home-rule bills giving the city wider powers, for submission to the legislature.

He has succeeded in procuring the dissolution of a temporary injunction restraining the city from employing tax ferrets.

He has successfully defended before the supreme court the ordinance requiring a tuberculin test of all milk.

He has reduced from $42,000 to $9,000 the average yearly amount of settlements in suits brought against the city for damages.

In brief, City Attorney Hoan and his assistants have demonstrated the proposition that no city government can make any real headway for the benefit of the people of the city unless its Law Department contains active loyal and efficient lawyers to back the city's fights in the courts.

Municipal Laboratories for the Study of the Abnormal Classes

Dr. Arthur MacDonald, of Washington, has suggested the establishment of laboratories under city, Federal, and state control, and also under private endowment for the study of the criminal pauper, defective and other abnormal classes, with a view to lessening these social evils by investigation of their causes.

Since the care, support, and direction of inmates of institutions for the abnormal and weakling classes are under city, state, and Federal control, it is urged that the scientific and sociologic study of these inmates falls under the same control.

The great progress already made by governmental scientific investigation of physical disease suggests governmental application of similar methods in the study of moral and social disease, the necessity of preventing or lessening which is much more urgent.

One reason why so many professional organizations dealing first hand with some phase of this work support this suggestion is that they think it is time that governments begin a serious study of those social evils which are their greatest enemies. Many worthy efforts are being made to lessen social evils, but they are mostly palliative, and do not go to the root of the matter.

One feature of this work, of interest to all lovers of truth, is the application of the results and methods of anthropology, psychology, medicine, sociology, and other sciences to the abnormal and weakling classes, thus constituting a new synthetic study which may bring out truths that apply as well to normal man as to abnormal man; for in the case of penal institutions most of the inmates are normal,

their crime being due to unfortunate surroundings, and not to their inward natures. Even, really abnormal persons, that is, those positively abnormal in at least a few respects, are nevertheless normal in most things, so that whatever be found true of them is to a large extent true of all persons. Though such results be incidental, they may be none the less important.

The greatest of all studies is that of man himself as he is to-day. A scientific investigation of man must be based primarily upon the individual, who is the unit of the social organism.

The study of man, to be of most utility, must be directed, first, to the causes of crime, pauperism, alcoholism, degeneracy, and other forms of abnormality. As in machinery we must first repair the wheels out of gear, so in society we must first study the criminal, crank, insane, inebriate, or pauper, who can seriously injure both individual and community.

If we are ever to have sufficient definite knowledge of living human beings that may become a science, it can only be done by the careful study of large numbers of individuals. The more thorough the study and the larger the number, the more useful such investigation can be made to society.

Dr. MacDonald, two years ago, submitted his scheme to foreign countries in connection with his propaganda of the scientific and sociological investigation of crime, and other abnormalities, under Federal, state or municipal auspices. A laboratory for the study of criminals on this general plan has recently been established in Russia, with a somewhat similar relation to the Russian government as that of the Smithsonian Institution to the United States government.

Other countries have promised consideration. The scheme includes investigation by use of instruments of precision and the obtaining of all important facts regarding the individual and his surroundings.

A bill providing for the establishment of such a laboratory in the District of Columbia was introduced in the House of Representatives last May.

The Advisory Idea for Cities

KANSAS City is getting the best advice obtainable about how to run the city, says the Minneapolis Journal, and is getting it free, through a sensible method adopted by the mayor when he went into office.

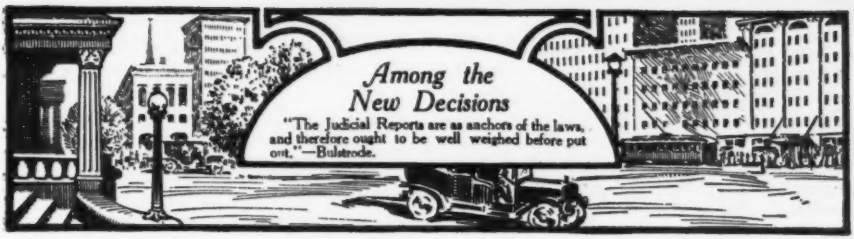
"If you should call on Mayor Brown, of Kansas City, on any Monday afternoon," states Munsey Magazine, "you would see him holding what he calls his 'mayor's cabinet,'—a heart-to-heart session with a representative group of merchants, doctors, lawyers, engineers, and journalists about the affairs of the community."

Mayor Brown felt that no man could run a city as it ought to be run, if he depended on his own knowledge of conditions, or on the advice of party leaders and politicians who had axes to grind. So he asked this group of private citizens to meet with him and the heads of the various city departments once a week, and to talk over the city's business frankly and informally.

In this way he brought to bear on civic problems the hard sense of the local merchants and the seasoned experience of large taxpayers and legal minds to help push the city ahead and to safeguard the taxpayers' money which is so frequently wasted.

This "cabinet" has, of course, nothing to do with legislating. It is advisory and is often able to give valuable suggestions. It does not take a great deal of time on the part of the citizens who thus volunteer to help run the city, and it gives the best and most practical minds in the city an interest in its advancement and betterment.

That it is proving to be a valuable thing for Kansas City, the splendid municipal progress now being made down there strongly indicates.



Appeal — right to — void judgment. That a party is entitled to appeal from, and obtain a reversal of, a void judgment brought to the supreme court on a case made, is determined in Fleeman v. Chicago, R. I. & P. R. Co. 82 Kan. 574, 109 Pac. 287, annotated in 33 L.R.A.(N.S.) 733. Although the courts are not of one mind as to whether a void judgment, decree, or order is appealable, the prevailing opinion is clearly to the effect that the appellate court will so far take cognizance of the void entry as to reverse it and restore the parties to the position they originally occupied.

Assault — threatening gestures with weapon. A question which has been but seldom before the courts was presented in the Mississippi case of Grimes v. State, 54 So. 839, holding that making threatening gestures towards another with an ax does not constitute an assault if one is not within striking distance of him, or sufficiently near to put him in fear of being struck. The few decisions upon this subject are collated in the note appended to this case in 33 L.R.A.(N.S.) 982, and are in agreement with it.

Attorney — disbarment — advertising for divorce case. Publishing advertisements in other states, and sending pamphlets there, for the purpose of attracting their citizens to the state for the purpose of instituting divorce proceedings in its courts, and giving employment to the one doing the advertising, is held in the Nevada case of Re Schnitzer, 112 Pac. 848, to be misconduct on the part of an attorney within the meaning of a statute permitting his disbarment or suspension therefor. The recent cases upon the question of advertising as a ground of disbarment are collected in the note accompanying this decision, in 33 L.R.A.(N.S.) 941, the earlier cases having been collected in a note in 9 L.R.A.(N.S.) 282.

Bankruptcy — future annuity contracts — setting aside. The case of Mutual L. Ins. Co. v. Smith, 106 C. C. A. 593, 184 Fed. 1, 33 L.R.A.(N.S.) 439, seems to be one of first impression upon the right of a trustee in bankruptcy to set aside an annuity contract procured by the bankrupt by the fraudulent use of funds.

It holds that a trustee in bankruptcy has no right to set aside contracts made by the bankrupt with money fraudulently obtained, by which an insurance company, in consideration of a present cash premium, undertook to pay him annuities beginning at a designated future time, where the company acted in good faith without notice of the source of the funds, since it acquired rights and advantages under the transaction of which it could not be deprived.

Boycott — hospital — exclusion from patronage by employees. A hospital excluded from the list is held in Union Labor Hospital Asso. v. Vance Redwood Lumber Co. 158 Cal. 551, 112 Pac. 886, to have no cause of action on the ground of illegal boycott, against several employers who, to serve their own interests, deduct from the wages of their employees a small amount for a hospital fund, in consideration of which the employees are entitled to tickets entitling them to care, in case of injury, in any hospital on a list furnished by the employers; and it was held immaterial that the lists were selected with a view to injure the business of the excluded hospitals. The note appended to this case in 33 L.R.A.(N.S.) 1034, collates and discusses the cases involving the lawfulness of a boycott by other than a labor union.

Commerce — master and servant — safety appliances. The Federal safety appliance act was construed in Southern R. Co. v. United States, U. S. Adv. 1911 page 2, to apply to all locomotives, cars, etc., used on any railway engaged in interstate commerce, regardless of whether such vehicles are used in moving interstate or intrastate traffic, and as so construed the court found the statute to be within the power of Congress to enact under the commerce clause.

Constitutional law — distribution of absentee's estate. The Massachusetts statute for the final distribution of the property of a person who has not been heard from for fourteen years was upheld in Blinn v. Nelson, U. S. Adv. 1911 p. 1, over objection founded upon the 14th Amendment to the Federal Constitution.

Contempt — charging bribery of jury — power of court to compel justification. That the court cannot by *ex parte* order require the publisher of a newspaper, although he is also an attorney at law, to justify in open court an article in which he raises a suspicion that the jury was bribed in an action tried before the court, where the information may necessitate the naming of persons in good standing before the community, and subject the publisher to libel suits, is held in the recent Michigan case of Warren v. Connolly, 130 N. W. 637, 33 L.R.A.(N.S.) 314.

This seems to be a case of first impression upon the question whether a court has power to require the disclosure of facts upon which intimations of corruption or misconduct by the jury or officers of court are based.

Contract — hotel accommodations — negotiations for others — personal liability. That one who engages accommodations at a hotel for a party, promising that they will occupy and utilize them, is personally liable for the contract price in case the party upon arriving, refuses to accept the accommodations, and goes elsewhere, is held in Danenhower v. Hayes, 35 App. D. C. 65, which is accompanied in 33 L.R.A.(N.S.) 698, by a note discussing the effect, upon a contract obligation, of the failure of a third person to take action essential to its performance.

Highway — taking picture in — using focusing cloth — negligence. One who, for the purpose of taking a picture, stands on the curb of a public street, and, after satisfying himself that the only vehicle in sight is standing still 100 to 150 feet away, covers his head with the focusing cloth, and keeps it so covered for five minutes, is held in Mastin v. New York, 201 N. Y. 81, 94 N. E. 611, to be guilty of such negligence that he cannot hold the owner of the vehicle liable for injury caused by its running against him, although the owner of the vehicle (a city ash cart) is the municipality, whose duty is to keep the highway safe.

There appears to be no case directly in point with this decision. Some analogous cases, however, are collected in the note which accompanies it in 33 L.R.A. (N.S.) 784.

Initiative and referendum — power of legislature to confer on municipality. It is held in the Texas case of Ex parte Farnsworth, 135 S. W. 535, that the legislature cannot confer upon the residents of a municipal corporation the power to enact ordinances by initiative and referendum, where the Constitution delegates to it the legislative power, and merely reserves to the people the right to assemble and apply to those invested with the powers of government for redress of grievances, while it forbids any change in the form of government.

The recent cases discussing the constitutionality of the initiative and referendum are collected in the note appended to this decision in 33 L.R.A.(N.S.) 968.

Insurance — adjacent buildings — including in one policy. A policy written by a state agent upon a brick building "and its additions adjoining and communicating," after notice from the owner that he wanted the policy to cover not only the brick building, but a wooden one, which had been moved back to make way for it, and, although separated from it by a few feet, was connected by passageway and used with it, is held in the

recent Michigan case of Shepard v. Germania F. Ins. Co. 130 N. W. 626, to cover the wooden structure.

The question of the import of the word "additions" in a policy of fire insurance is treated in the note appended to this decision in 33 L.R.A.(N.S.) 156. It there appears that an insurance policy, like other contracts, is interpreted to give effect to the intention of the parties, ascertained from the language used in the instrument as a whole, aided by extrinsic evidence of the situation of the parties at the time of executing the contract, the purpose and intent of the contract, and other surrounding facts and circumstances having a legitimate bearing or tendency to disclose such intention. Peculiarly applicable to the question under consideration is the cardinal rule that a contract will be construed in a manner to give effect to every material word used therein, if such a construction is not inconsistent with other portions of the contract, or incompatible with the surrounding facts and circumstances. Applying this general rule, it is obvious that the technical definition of the word "addition," or language generally used in connection therewith, "adjoining and communicating," is of little, if any, value in determining the sense in which these words were used in a policy. The intention of the parties is the real question, and where the policy purports to cover some building other than the main building, by employing "addition" or "additions," it will be construed to cover a structure physically or by use connected with the main building insured, especially if there is no other building to which the term "addition" can be applied.

Intoxicating liquor — illegal sale — change of court ruling — effect. That one cannot be punished for selling intoxicating liquor at a time when the prohibitory law is, by decision of the highest court of the state, unconstitutional, although that court subsequently changes its opinion and holds the law to be valid, is laid down in State v. O'Neil, 147 Iowa, 513, 126 N. W. 454. This seems to be the only case directly in point on the question. It is accompanied in 33 L.R.A. (N.S.) 788, with a note on the subject of criminal responsibility for the violation of a statute after a judicial ruling that it was unconstitutional, and before that ruling has been changed.

Libel — publication of conditional sales — record — injury to seller. The publication of a copy of a public record of conditional sales made by a retail merchant is held in the Washington case of State v. Darwin, 115 Pac. 309, annotated in 33 L.R.A.(N.S.) 1026, to be privileged, and not to subject the publishers to a prosecution for criminal libel, although it is unwarranted, and is alleged to have subjected the seller to the hatred of his customers and injured him in his business.

While State v. Darwin seems to be a case of first impression in applying the law of libel and slander to a publication concerning the relation of a merchant to his customers, it is clear that, aside from any question of privilege, words concerning merely a legal and proper relation of a merchant to his customers—merely "charging a person with having done that which he may legally and properly do"—are not libelous *per se*, although it might be otherwise with a publication concerning an illegal or improper business relation.

Married women — promise — moral obligation. The moral obligation of a married woman to pay for supplies furnished for use in her family at a time when she had no legal power to contract for them is held in Lyell v. Walbach, 113 Md. 574, 77 Atl. 1111, to be insufficient to support her promise, after her disability has been removed, to make such payments. This decision is sustained by the numerical weight of authority. It is accompanied in 33 L.R.A.(N.S.) 741, by the recent cases on the subject, the earlier decisions having been collated in a note in 7 L.R.A.(N.S.) 1053.

Master — incompetence of servant — general reputation. That the incompetence of a servant which will render a master liable for injury caused to a fellow servant by his negligence may be established by evidence of reputation, although the alleged incompetence did not arise until

after his lawful employment, is held in the Pennsylvania case of Rosenstiel v. Pittsburg R. Co. 79 Atl. 556, annotated in 33 L.R.A.(N.S.) 751.

It was held in many of the earlier cases that evidence of a servant's reputation is not competent to show his actual incompetency; but where the alleged negligence of the master was in the original selection and employment of the culpable fellow servant, it would seem that evidence of the latter's bad reputation at the time of hiring is admissible, if not to show actual incompetency, at least to show actionable negligence on the part of the master in the hiring, in which he was bound to exercise due care and diligence.

If a culpable fellow servant was competent when employed, and the alleged negligence on the part of the master is in retaining him after he has become incompetent, it is necessary, under the presumption that a competent servant will remain competent, in order to charge the master with liability, to show both the actual incompetence of the servant and the master's notice thereof; and some cases have held, as in Rosenstiel v. Pittsburg R. Co., that the incompetence of a culpable fellow servant may be established by evidence of reputation, although no other case seems so clearly to have applied this rule, where the alleged incompetence did not arise until after the servant's lawful employment.

Municipal corporation — control of public service rates. In the absence of a delegation thereof by the legislature, express or necessarily implied, a municipal corporation is held in the West Virginia case of Bluefield Waterworks & Improv. Co. v. Bluefield, 70 S. E. 772, annotated in 33 L.R.A.(N.S.) 759, to have no power to regulate or control rates for public service, such as the furnishing of water, gas, or electricity, or the terms and conditions of contracts therefor, otherwise than by contract with the corporation or person rendering such service. This decision follows the rule established by the earlier cases on the subject.

Municipal corporation — license — special privilege — hack stands. A municipal ordinance is held in McFall v. St. Louis, 232 Mo. 716, 135 S. W. 51, annotated in 33 L.R.A.(N.S.) 471, not invalid as unconstitutionally granting special privileges, which allows the municipality to grant special permission to licensed hack drivers who can procure the consent of the abutting property owners, to stand their vehicles in the street in front of such property, when the same privilege is not granted to those who do not obtain such consent.

But few cases other than McFall v. St. Louis have considered the question as to the power of a municipal corporation to establish in a public street exclusive hack stands. These cases are in harmony with the doctrine of McFall v. St. Louis, and sustain the power of a municipality to establish such stands in a public street where the abutting property owner consents thereto.

Municipal water supply — tenants' bills — requiring payment by owners. A water company whose charter provides that every person within a municipality shall be entitled to water upon paying a reasonable compensation is held in the Vermont case of Bourke v. Olcott Water Co. 78 Atl. 715, annotated in 33 L.R.A.(N.S.) 1015, not entitled to make the payment of its bills by owners of buildings a condition of supplying water to tenants.

Obstructing justice — spiriting away witnesses. It seems to be well settled, in accordance with the recent case of Com. v. Berry, 141 Ky. 477, 133 S. W. 212, although the decisions are not numerous, that one who procures a person having knowledge of an offense to leave the jurisdiction of the court to avoid giving evidence is guilty of obstructing public justice, although such person has not been subpœnaed and was under no obligation to appear before the grand jury. This offense being one against the very object and purposes for which courts are established, and not merely against their process, it is immaterial that the person procured to absent himself had not been regularly summoned or legally

bound to attend as a witness. The cases dealing with this subject are collated in the note appended to the report in 33 L.R.A.(N.S.) 976.

Park — dangerous condition — injury — liability. Where a dangerous condition exists in a public park or way, in a portion thereof not leased, the power to rent portions only of such public lands having been conferred by statute, such condition not arising from it or in consequence of the management or control of the municipality over the rented parts of the public lands, or connected therewith, it is held in the New Jersey case of Bisbing v. Asbury Park, 78 Atl. 196, annotated in 33 L.R.A.(N.S.) 523, that the negligence of the public authorities in permitting such condition to exist will not render such municipality liable to respond to the suit of one of the general public injured in consequence thereof.

The weight of authority supports the fundamental proposition of law upon which the decision in Bisbing v. Asbury Park rests, that a municipality maintaining public parks is discharging a public duty, and is not performing a private, corporate function for its own advantage.

Railroad — lowering safety gates upon team — liability. That a railroad company which begins to lower a safety gate at a street crossing upon approach of a train, at a time when a traveler in a vehicle is upon the track, is bound to arrest the descent of the gate to give him opportunity to escape, and will be liable for the injury caused by lowering the gate upon his horses, is held in the North Carolina case of McLennan v. North Carolina R. Co. 70 S. E. 1066, which is accompanied in 33 L.R.A.(N.S.) 988, by a note in which the decisions bearing upon the duty of a railroad in operating safety gates at its crossings are collated.

Will — devise to widow of married man — construction. A devise to the widow of a man who is married at the time the will is made is held in Meeker v. Draffen, 201 N. Y. 205, 94 N. E. 626, to be not limited to the wife then living, but belongs to the one who eventually becomes his widow as the result of death of the wife and remarriage of the man.

The question as to which of two or more persons who have at different times answered, or might have answered, to the description of "husband," "wife," or "widow," and who are not designated otherwise than by such relationship, is to be taken as the intended beneficiary of a testamentary gift, or of an insurance policy or benefit certificate, is discussed in the note appended to this case, in 33 L.R.A.(N.S.) 816.

Voter — residence — selection — non-presence. The selection and purchase of a home in a state, with the intention of making it a permanent residence, is held in the Colorado case of People v. Turpin, 112 Pac. 539, annotated in 33 L.R.A. (N.S.) 767, not of itself sufficient to make one a citizen of the state for the purpose of fixing his right to vote, if, pending the vacation of the property by the former occupant, he continues to occupy his former residence in another state.

Recent English and Canadian Decisions

Bankruptcy — right in equity to indemnity as assets. An equitable right of a trustee whose liability to pay has become absolute, to be idemnified by his *cestui que trust* before actual loss has been incurred, is not property which will vest in his trustee in bankruptcy for the benefit of all his creditors. Re Richardson, [1911] 2 K. B. 705.

Broker — liability of one acquiring lands in partnership with seller's agent to account for profits. One who, knowing the other party to be the agent for the sale of certain lands, entered into an agreement with him for their purchase on joint account in his own name, upon the understanding that they should each be owners of one half the lands and share the profits equally upon a resale, as well as the commission to be received by the agent from his principal, was held in

Coy v. Pommerenke, 44 Can. S. C. 543, to be accountable equally with the broker to the latter's principal for profit made upon a resale.

Corporations — right to subscribe for increase in stock — rights of life tenant and remainderman. The proceeds of a right to subscribe for an increase in the capital stock of a corporation are, as between the life tenant and remaindermen of the original stock, capital, and not income. Re Walton, 20 Manitoba L. Rep. 686.

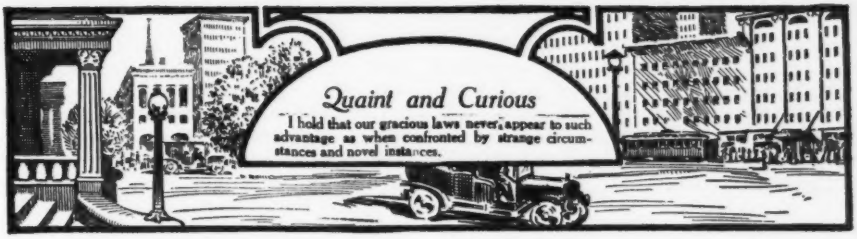
Divorce — revival of condoned adultery. The matrimonial offense of desertion created by reason of noncompliance with a decree for restitution of conjugal rights revives condoned adultery. Price v. Price [1911] P. 201.

Equitable conversion — period at which it takes place. Where an order is made by a court in an administration action, ordering an absolute sale of a particular property, and thereafter, but before the sale takes place, a party interested therein dies intestate, his share is personal estate, and not realty. This results from the fact that the right of such person, after the making of the order, is not to the land itself, but to have the land sold and his portion of the proceeds turned over to him. Fauntleroy v. Beebe [1911] 2 Ch. 257.

Specific performance — laches. One who, in consequence of a general depression in values, ceased to make payments upon a land contract, with the confessed intention of putting in no further money unless the property should rise in value enough to make it worth his while to complete the purchase, and who was duly given notice of cancelation pursuant to the provision of such contract, and who did not bring his action until nearly two and one-half years after making his last payment, was held in Dalziel v. Homeseekers' Land & Colonization Co. 20 Manitoba L. Rep. 736, not to be entitled to any equitable relief, either by way of specific performance or a return of the money he had paid.

Sales — remedy of purchaser where goods are not of contract description. A "close question" in the law of sales, as to which the judges in the courts below were at variance, was decided by the House of Lords in Wallis v. Pratt [1911] A. C. 394. In that case, seed described as being of a certain variety was sold on the condition that "sellers give no warranty, express or implied, as to growth, description, or any other matters." The seed delivered was not of the sort designated, but a different and inferior variety. The buyer accepted the seed, believing it to conform to description, and resold it as such to other parties, to whom he was compelled to pay damages for the mistake. Under this state of fact the question arose as to whether the buyer, who had lost one remedy by putting it out of his power to avail himself of his right to return the seed as not conforming to description, was precluded from maintaining an action for damages on account of such nonconformity, by the stipulation in the contract of sale against warranty; and it was held that the fact that the only remedy available to the buyer was one applicable to a breach of warranty did not cause the condition that the goods should correspond with description to become converted into a warranty within the meaning of the stipulation. While this decision is made under the English sale of goods act, the fact that such statute is mainly declaratory of the common law renders the case of interest to American lawyers.

Wills — election of widow to take provision in lieu of dower as affecting rights in undisposed-of proceeds of sale of lands. That a widow's election to take a testamentary provision made expressly in lieu of dower does not necessarily preclude her from asserting her statutory rights in a balance remaining, after payment of debts and legacies, from the proceeds of lands directed to be sold, is held in Re McEwen, 23 Ont. L. Rep. 414, the ground for the court's conclusion in that case being that it was testator's intention in making the provision only to prevent his wife asserting dower in the lands in question to the prejudice of the scheme of his will, *i. e.*, an immediate sale of the lands. "Having elected to accept the benefit offered by the will, she cannot assert any claim against the lands; but as to the proceeds of the lands not disposed of, he died intestate; and the widow has the same right in the surplus as if testator on the face of his will had declared that it was to be so distributed."



Enterprising Mayors.

Last June there died in Houston, Texas, Judge E. B. Mentz, who in 1877 was acting secretary of the state of Louisiana, and as such signed the election certificates during the days of the returning board. His signature made Rutherford B. Hayes president of the United States. But this is merely by way of introduction. We wish especially to speak of the time when he was mayor of Morgan City and was little short of a municipal autocrat, as the charter conferred on the mayor special privileges far in advance of what is now known as the commission form of government. The charter was secured by Chas. Morgan, who built the T. & N. O. line, running from New Orleans to Houston. Morgan wanted something that would stretch like a rubber band and jump back into perfect shape when it was let go. The legislature gave it to him under these elastic provisions. Judge Mentz, as mayor of the city, shelled the streets for the cost of hauling, after having confiscated, as a menace to public health, the accumulation of oyster shells which would have been cheap at $1 a yard. The oyster companies put up a roar that was distinctly audible at the delta of the Mississippi, but Judge Mentz wanted the shell, and the city hadn't the money to pay a high price. He was mayor of the city and stretched the elastic charter Chas. Morgan had fished up at Baton Rouge, until it sounded like a fiddle string when it was rasped.

Marriages are made in—Des Moines by the Municipality. The new civic departure, says the St. Louis Republic, is described as a clearing house for lonely souls, and candidates are invited to send in their photographs, references, et cetera.

There will be a classified waiting list, and women will be ranged in the order of their ages; Class A, those of eighteen to twenty-five; Class B, twenty-six to thirty-five; Class C, from thirty-five up. A man will be required to designate the class within which his age falls, but his choice may range freely over all classes, of course. Marriages made through the bureau will be solemnized free of charge by the mayor.

We suspect that the municipal matchmaker has unwittingly prepared itself to serve the entire American continent, and as for Class A, we predict simply a land-office mail-order business.

The Mayor of Indianapolis has been selling potatoes. With four moving vans backed up to the curb at the city market and surrounded by 600 or 800 struggling men, women, and children, says the Indianapolis Despatch, the sale of the carload of potatoes purchased by Mayor Shank to break the commission row corner on potatoes began in the morning and was continued till late in the afternoon. The struggling mass that surrounded the vans carried baskets, which were held high above heads, and insistent voices demanded a peck, a half bushel, or a bushel, while the men inside the vans tried in vain to wait on the impatient mass with something like order.

On each side of the vans in letters that could be seen squares away were the words, "Shank's potatoes," and around them massed everyone in the market that cared to buy. In the edge of the crowd were middlemen and agents of commission row saying the Michigan tubers were no good; that they were watery, and that those who bought more than enough for a day or two's use would find them spoiled on their hands.

But these charges and predictions were set down as slanders, and as those who had been served left with baskets on their arms they showed an air of triumph that could not have been more genuine if the corner in potatoes had really been broken.

Charging What the Traffic Would Bear. This story is told of B. M. Allen, the famous criminal lawyer of Birmingham, Alabama. A negro client entered his office, and said: "Mr. Allen, my brother is in jail, and I want to see what it cost to get him out."

The rapid growth of Birmingham had made the building of a large new jail imperative, and an imposing stone structure took the place of the old one, which was known as "the little brick jail." At the time Mr. Allen was being consulted the little jail had not been in use for a long time, except as a storage warehouse.

When his negro client stated the facts, Mr. Allen saw it was a weak case, and that it would be easy to acquit the prisoner, and replied: "I can get him out all right, Sam, and it will cost you $25, but I won't turn a wheel until you go out and raise the money."—that being the customary way of securing fees from the average negro.

Sam happened to be a thrifty negro of the Booker Washington type. He had that very day sold a farm for a large sum and had the money in his pocket. He pulled out a roll from his trousers pocket large enough to choke a horse, and began to peel off a $20 bill, when Mr. Allen interrupted: "Look here. Sam! Is your brother in the little red brick jail or the big jail?"

"He's in de big jail, Mr. Allen," replied Sam.

"Oh, I thought you meant the little jail," said Mr. Allen. "It'll take $50 to get him out of the big jail." And Sam paid the fee cheerfully.

A Silent Partner. Unable to pronounce part of the marriage ceremony in the sign language, Judge George R. Smith of the probate court, says the Minneapolis Journal, has solved the difficulty of performing the ceremony for Robert Brown and Maggie Cooper, a mute, by employing a stenographer and typewriter. With the aid of the typewritten part of the ceremony made on the spot to supplement the spoken words addressed to the groom, who was not deaf and dumb, the court proceeded without a hitch. Forty-two minutes after the ceremony started the pair departed as man and wife.

Storm Signals. Pleading guilty to swearing at his wife in the sign language, a deaf mute of St. Joseph, Missouri, was fined $10 in police court. He had been charged with using "loud and profane" language, but, when haled into court, explained that he could not hear or speak. The word "loud" was stricken from the information, and he pleaded guilty in writing to the charge of using "profane language" toward his wife, who is also a mute.

"He drove me speechless and put cramps in my fingers," Mrs. Bessie Laurie, of New York, asserted after leaving her deaf and dumb husband. "Imagine the strain of an argument with gymnastic digits!"

Just Like a Man. A young couple at Quincy, Massachusetts, had joined hands and were about to be pronounced man and wife, when the clergyman glanced over the license. Then he noticed for the first time that the license permitted the groom to hunt deer, but said nothing regarding marriage.

The angry pair immediately departed for the office of the city clerk in Boston, where the license had been procured, to demand an explanation. The clerk explained by telephone to the clergyman that the groom had gone to the desk where hunting licenses are issued, and had not mentioned marriage.

A Juror at Large. Jury boxes all look alike to William H. Maxwell, of Chicago. For that reason he succeeded in tying up two trials and causing one litigant to compromise his case. Maxwell served Monday on a jury in a suit for debt in Municipal Judge Turnbaugh's court. Tuesday he strolled into the city hall. Glancing into Judge Heap's court room, he saw there was a

vacant chair in the jury box. He quietly made himself the twelfth talesman and listened with interest to the trial. As the attorneys in the case, which was a personal injury suit, had agreed that eleven jurors would be enough, it was soon noticed there were twelve men in the box.

"Your Honor," said an attorney to the judge, "there is some mystery about this jury. When we began this trial there were eleven jurors, now there are twelve. Where did the twelfth come from?"

Judge Heap looked over to the jury box, and grew puzzled. "You've got me, Mr. Counsel," he said, "I can't figure it out."

The names of the eleven jurors were called and all responded.

"Well, who are you, sir?" said the judge, pointing to Maxwell. "You don't belong there."

"What?" ejaculated Maxwell. "Why, I sat in this case all forenoon yesterday."

"No, you didn't," said the judge. "This case just began this morning."

"Well, what case is this, then?" inquired Maxwell in surprise.

When told, he hurried from the room and went to Judge Turnbaugh's court. There he learned that the litigants had tired of waiting for him, and had compromised their suit.

A Jersey Judge. The peculiar spectacle of a judge fining himself for a violation of the law marked the court proceedings at South Orange, New Jersey, some days ago, much to the amazement and amusement of the people of that town. It seems that one of the judge's teamsters hitched his "hoss" to a tree, which is contrary to law in Orange, and when the judge found it out he called himself up to the bar, reprimanded himself, and dug down in his jeans and "coughed" up a $5 bill. This was his monologue:

"——— ———, you are charged by Patrolman Abner with allowing one of your employees to tie his horse to a tree on Church street, this village. How do you plead to the charge, guilty or not guilty?"

"Guilty."

"I fine you $5."

The judge pulled forth a bill and deposited it in a desk drawer, where he keeps the fine money while waiting to turn it over to the village treasurer.

And still they say that New Jersey is a queer place.

A Question of Ethics. A jury in the probate court at Mexico, Missouri, according to a verdict filed recently, decided it is unlawful for a doctor who is also a preacher to charge for preaching his patient's funeral sermon if he dies.

Not Tactful. "I was subpœnaed once to come to St. Louis and testify in a case in the Federal court. While attending I was greatly interested to learn that in the United States courts there is a severe distinction between the bench and the bar.

"The judge sits on the bench, while the attorneys are many feet in front of the court, behind a long table,—the bar. Between the two is a dead line. The attorneys must not get on the wrong side of the bar.

"But in the case I was to testify in there was a bright young lawyer making his first appearance in a Federal court. He did not know the danger of walking around the table, and so advanced close to the judge to make his argument.

"'I can't hear you there,' the judge said in a severe tone to the young attorney as soon as he had begun to talk.

"The young man advanced several steps, smiled blandly at the court, and raised his voice as he explained:

"'I should have remembered that your honor is an old man.'

"'I can't hear you there,' thundered the judge as he sat bolt upright and grew red.

"The young attorney was determined that the court should hear him, and might have climbed up on the bench but that a bailiff ran to his rescue, and, leading him away back behind the bench, told him:

"'This is the only place he can hear you.'

"'Well!' exclaimed the young man,

'I've heard of far-sighted persons, but this is the first time I ever met anyone that couldn't hear until you got a certain distance away.' "—St. Louis Post-Dispatch.

Lawyer Puts One Over Statesman. A local attorney, says the Hastings (Nebraska) Tribune, laid it over a local statesman in this wise, the statesman paying a fee for the lesson in careful listening and alertness.

The attorney owns lots in the eastern part of the city on which flourishes a luxuriant growth of alfalfa. When the hay was cut and piled in cocks, the statesman drove past, encountering the attorney complacently musing on the edge of the field.

"That yours?" queried the statesman.

"It is my land," the attorney admitted, with pride.

"Put up the hay yourself?" persisted the statesman.

"Not exactly. A man put it up for half."

The statesman scanned the field. "What'll you take for your interest in the hay?"

The attorney thought deeply, closing his eyes in the effort.

"Two dollars," he said.

"Here you are," and the statesman handed over the money, which the attorney pocketed promptly.

The statesman laughed. "You know a lot about hay," he chuckled. "I'd given you $5 quick as two."

"Hay? I didn't sell you any hay. Another fellow bought that."

"Well, what did you sell me then?"

"I don't know. I supposed you did. You offered me $2 for my interest, whatever it is, and you can have it, but I suppose the other fellow will claim the hay. That's what he bought."

Every time the attorney sees the statesman he asks him what the price of hay is, and the statesman, being wise, just considers it a joke and laughs.

A Missouri Eugene Aram. "The story of 'Eugene Aram,' by Bulwer Lytton, was responsible for one of the most strangely pathetic trials I ever witnessed," remarked Circuit Judge N. M. Shelton, of Macon, Missouri. "It occurred some years ago in Schuyler county.

"A young district school teacher, charged with attempted murder, employed John Smoot, of Memphis, and myself to defend him. The teacher had not long since married a widow. One day he learned a man had been making uncomplimentary remarks about his wife. He immediately armed himself, sought out this party, and, with the remark, 'You have been slandering my wife, sir, and I am going to kill you!' pulled out his revolver and began blazing away. Several bullets struck the victim, but he recovered, and the school teacher was arrested.

"There was quite a bit of feeling over the affair, and when the next term of court came on Mr. Smoot and I deemed it best to get a continuance. This was easily done, it being the first call. But at the next term conditions, as we looked at it, were no better, and we again sought a continuance. To our surprise our client objected; he was ready for trial, he said; was just bound to have a trial; didn't care to be in suspense any longer. Of course we tried to reason with him, going over all the points why it was best to continue the case. But his head was set, and finally he said:

" 'You gentlemen may just consider yourselves out of the case, and I will defend myself!'

"He was so positive about it that we took him at his word, and, after considering the matter, it occurred to us that possibly that might be best for him after all. The state's attorney was re-enforced by two strong lawyers, employed by the man who had been shot. But this would, we saw, be an advantage for a defendant who had to try his case unaided.

"I asked the defendant if he hadn't been inspired to conduct his own defense by reading the skilful plea of Eugene Aram, who was tried for the murder of Geoffrey Lester, alias Daniel Clarke, in Lord Lytton's powerful story.

" 'Yes,' he said, 'I have read that book several times, and I like the idea. Aram made as good a defense as any lawyer could have made for him, and there's nothing to hinder me from doing the same. I'm not afraid to try.'

"The trial excited a great deal of interest, more especially because a man in the shadow of the penitentiary was making a lone fight for his liberty.

"As I recall it, the defendant didn't do much in the way of cross-examining witnesses. The three lawyers for the state were in a delicate position,—they knew the least sign of severity or unfairness would awaken the jury's sympathy for the accused, so they handled him with gloved hands, letting him do pretty much as he pleased.

"The school teacher's real defense was made in his argument, just as Eugene Aram had made his before the English court and jury. He pretty well covered the speech of Lytton's hero, and did it effectively, it seemed; spoke of being there alone, not having the advantages of counsel, unlearned in the law, unacquainted with the ways of courts; just a plain man, telling a straight, unvarnished tale to a jury of his peers, just as Eugene Aram had done.

"It was quite an effort, and I felt confident that he had done better for himself than the ablest lawyers might have done. But just before the case was submitted an old farmer on the jury arose to ask a question, 'by leave of court.'

" 'Certainly,' said Judge Ellison, who presided at the trial; 'you may ask any proper question.'

" 'In this trial over there he's been talking about,' said the juryman, 'what did they do to that man Aram, who tried his own case?'

" 'Oh, they convicted him,' said the defendant, frankly, before the court had a chance to rule on the question.

"The jury went out and wrestled with the case, and then returned with a verdict of guilty, assessing the punishment at two years in the penitentiary. The Eugene Aram precedent had been followed.

"But the school teacher's wife, who had been his constant attendant and adviser during the trial, immediately got busy with petitions for a pardon. She traveled all over the county getting signers, and even the jury recommended the pardon. He was released after two months' imprisonment.

Tit for Tat.—A Long Island man was holding forth with respect to the "borrowing habit" so common in suburban communities, says Lippincott's, when he was reminded of the following instance:

A writer of miscellaneous matter, being just then engaged on an article on pessimistic literature, learned that one authority he wished to consult—Edward von Hartmann—was to be found in the library of a lawyer of the place. Accordingly, the writer repaired to the lawyer's house and asked the loan of the volume.

"You are entirely welcome to it," said the owner, but you musn't take it from my library. I'm sorry, but I've lost so many books through lending them that a year ago I registered a solemn vow never to let another volume leave my house."

The writer thanked the lawyer, but, of course, he did not avail himself of the privilege extended him.

Some time later the lawyer came to the writer and asked to borrow his lawn mower.

"I am delighted to lend you my lawn mower," said the writer, "though it is my rule never to permit it to leave my lawn. There, however, you may use it to your heart's content."

"City Government by Commission." Edited by Clinton Rogers Woodruff (D. Appleton & Co.) $1.50.

This book is the first of a proposed National Municipal League Series to be made up of volumes, each dealing with a special phase of municipal problems. It is composed of papers prepared by men who have given much serious and thoughtful attention to questions of municipal administration, and embodies the most accurate and up to date *data* obtainable on the subject. The book, after presenting an historical sketch of the commission government idea and outlining the fundamental principles on which it rests, describes and analyzes the provisions of various charters, and sets forth in detail the popular arguments for and against the system. The outworkings of the Galveston and Des Moines plans are traced, and an extensive and valuable bibliography is appended to the work. The growing number of students of municipal affairs will welcome this publication, and look forward with anticipation to the succeeding volumes of the series. Instructive and entertaining, analytic and convincing, this book meets a present need.

"Declarations of Trust as Effective Substitutes for Incorporation." By John H. Sears of the St. Louis Bar. (Counselors Pub. Co., St. Louis, Mo.) $1.50.

In this treatise the author briefly contrasts the attributes of corporations with those of trust estates, and points out the advantages of the trust method over incorporation. These advantages mainly consist in freedom from various forms of taxation and from certain obligations and requirements imposed by law upon corporate bodies. The fact that dissolution may be effected without the formalities required of corporations is also noted. The book contains forms of a declaration of trust for the purpose of holding real estate or of handling personal property. Under this method the trustees in whom the legal title is vested issue negotiable certificates to the subscribers, conduct the business, and declare dividends.

It is obvious that the adoption of such a system may be, at times, desirable, and anyone undertaking it will do well to familiarize himself with Mr. Sear's treatise.

"A History of the American Bar Colonial and Federal to the year 1860." By Charles Warren of the Boston Bar. (Little, Brown, & Co., Boston.) Octavo. Cloth, gilt top. $4.00 net.

Mr. Warren has written a very important work, which is of value, not only to lawyers, but to all who are interested in American history. In his preface the author states that his work is not a law book for those who wish to study law, but an historical sketch for those who wish to know something about the men who have composed the American Bar in the past, and about the influences which produced the great American lawyers.

A portion of the valuable material in the work was published in a History of the Harvard Law School, but at the suggestion of many lawyers and a recent president of the American Bar Association, the author has revised, corrected, and greatly enlarged this material in order to give it greater value to the bar in general, and to the student of history. In part I. the author deals with the legal conditions in each of the American colonies during the 17th and 18th centuries, prior to the American Revolution, the status of the common law as applied by the courts, the method of appointment of the courts, the leading lawyers, legislation regarding the legal profession, the materials for and methods of a lawyer's education, with contemporaneous legal conditions in England and America, etc.

Part II. portrays the growth of the American bar from the foundation of the supreme court to 1860. Among the topics dealt with are the curious and widespread prejudices against lawyers as a class from 1785 to after 1800, the composition of the bar of the United States Supreme Court, during the different eras, the leading cases argued, not as mere cases deciding points of law, but as striking events in legal history, particular attention being given to the great lawyers who acted as counsel, and to the effect of the decisions upon economic, social, and legal conditions.

Biographical information regarding all lawyers of distinction is given, also a history of the early law professorships and law schools from 1784 to 1830, and the rise and development of American law books are shown.

Three chapters are devoted to the great factors in the development of the bar,—the rise and growth of corporation and of railroad law between 1830 and 1860, the expansion of the common law to meet the new economic and social conditions arising between 1815 and 1860, and the weighty movement for codification between 1820 and 1860. These three chapters make plain the influences which developed the American bar from a small group at the beginning of the 18th cen-

tury to the vast and influential body which composed it at the end of the succeeding half century. They also graphically describe the progress of American law, and show what a highly important factor in the history of the United States it has been.

Elliott's "Work of the Advocate." Flexible Morocco, $5; Cloth, $4.

"Municipal Bonds Held Void" By Maurice B. Dean. Canvas, $2.50; Paper, $2 net.

"1911 Supplement to the 1909 Pocket Edition of the Codes and General Laws of California." $5.

Molinari's "Industrial Chemistry." 3d ed. Translated by T. H. Hope and Dr. E. Feilmann. 2 vols.

"Private Corporations." By Charles B. Elliott. 4th revised edition, by Howard S. Abbott. 1 vol. Buckram, $6.

"Federal Digest." Volume 8. Covering vols. 161 to 180 Federal Reporter, vols. 29 and 30 Supreme Court Reporter, and vols. 211 to 218 U. S. Supreme Court Reports. $7.50.

"Law of Wills in Michigan." By Franklin A. Beecher. 1 vol. $5 net.

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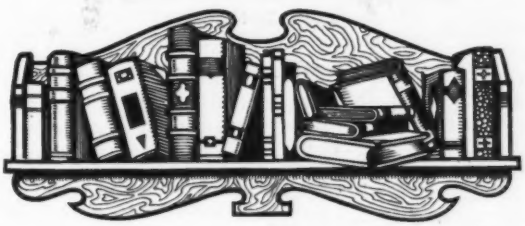


North Dakota's Progressive Governor

HONORABLE John Burke, Governor of North Dakota, is a graduate of the Law Department of the Iowa State University. He commenced the practice of law in Des Moines, Iowa, in the fall of 1886, entering into partnership with his brother, Judge Thos. C. Burke, now of Baker City, Oregon. Two years later, feeling that the Northwest offered greater inducement to a young lawyer, he left his native state and located in Rolette county, North Dakota. He is a member of the law firm of Burke & Middaugh, Devil's Lake, North Dakota.

HON. JOHN BURKE

Governor Burke served two terms as county judge of Rolette county. He was elected to the state legislature as a member of the lower house in 1891, and to the senate in 1892, serving in the latter body in 1893 and 1895. In 1906 he was called upon to accept the nomination for governor, and was elected by a large plurality. In 1908 he was unanimously renominated by his party, and re-elected by a substantial majority. In 1910 Governor Burke was nominated for the third successive term as governor and, after a remarkable speaking campaign, was again victorious at the polls.

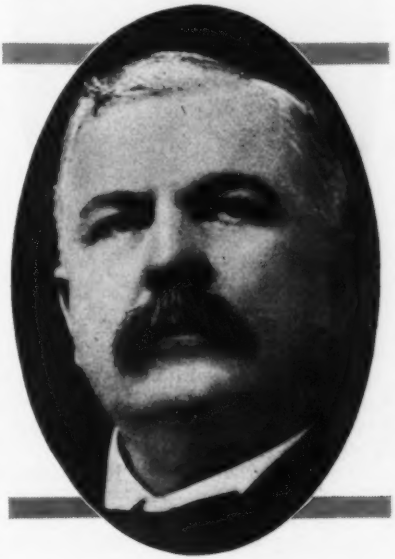
He has thus established a record in the political history of the state by being elected governor for three successive terms and in the country at large he has gained the unique distinction of winning as a Democrat a three times victory in a state regarded as one of the most solidly Republican in the Union.

Governor Burke is considered one of the great political speakers of the day. His three campaigns for the governorship were without parallel in the political annals of the Northwest, and established his reputation as one of the greatest and most effective campaign orators of the country. He is one of the leading and potent factors of the Democratic party of North Dakota. He is a man possessed of so many sterling qualities that he has made a host of friends throughout the state, regardless of political affiliations. His administration has been clear and clean cut, as well as businesslike. Many changes have been effected, and he enjoys the confidence and respect of the people of the state.

United States Circuit Judge, Fourth Circuit

WHEN President Roosevelt appointed Honorable J. C. Pritchard to the position of United States circuit judge for the fourth circuit, writes Mr. Alf. S. Barnard, of the Asheville, North Carolina, bar, he did not select a jurist who was entirely without experience.

In 1895 Judge Pritchard was elected to the United States Senate to fill the vacancy caused by the death of Senator Vance, and after serving for the unexpired term he was elected in 1897 for a full term. While in the United States Senate, Judge Pritchard served on many of the most important committees and rendered distinguished service. At the expiration of his term he was appointed associate justice of the supreme court of the District of Columbia, and moved to Washington to live. While a member of the District of Columbia court he tried the famous postoffice case of United States v. Machen and others, and also the case of United States v. Tyner and Barrett, Judge Tyner having been assistant attorney general for the postoffice department. In 1904 he was appointed by President Roosevelt to succeed Judge Charles H. Simonton, United States circuit judge for the fourth circuit, and immediately upon his confirmation moved to Asheville, where he now lives.



HON. J. C. PRITCHARD

As Circuit Judge, Judge Pritchard has heard and determined a number of intricate cases involving questions of great public interest. Among the first cases presented to him after his appointment was the contempt proceedings in Re Daniels, in which Daniels, the editor of the News and Observer, of Raleigh, had been found guilty of contempt by Judge Purnell, United States district judge for the eastern district of North Carolina. Judge Pritchard construed the Federal statute relating to contempt, and released Daniels on a writ of habeas corpus.

He decided the South Carolina bond case and the Virginia and North Carolina rate cases, in all of which his judgment was affirmed by the supreme court. As a member of the United States circuit court of appeals for the fourth circuit, he wrote the opinion of the court in the Pit Cairn cases, involving a construction of the interstate commerce law relative to the distribution of coal cars. In those cases Judge Pritchard first announced the rule that there must be an equal distribution of cars among all those similarly situated, and the rule so announced by him has been adopted by the United States Supreme Court.

Judge Pritchard is a tireless worker. He not only attends to the duties of his judicial position, but he devotes much time to local affairs. There is hardly a local organization—commercial, social, or charitable—to which he does not belong and in which he does not take an active part. As a judge he is always just, never led astray by public opinion or popular prejudice. As a citizen he is high-minded, upright, and patriotic, and no one has in a larger measure the confidence and esteem of his fellow men.

United States Circuit Judge, Second Circuit

HONORABLE Walter Chadwick Noyes was born at Lyme, Connecticut, on August 8th, 1865. He is a grandnephew of Chief Justice Waite of the supreme court of Connecticut, and cousin of Chief Justice Waite of the Supreme Court of the United States.

HON. WALTER C. NOYES

Judge Noyes was educated at private schools and at Cornell University. He was admitted to the bar in 1886 and practised in New London, Connecticut. In 1891 he became a member of the law firm of Brandegee, Noyes, & Brandegee, his partners being the late Augustus Brandegee, an eminent lawyer and brilliant advocate, and his son Honorable Frank B. Brandegee, the present United States Senator from Connecticut.

He was elected judge of the court of common pleas for New London county in 1895, and held that office until 1907. In 1904 he was chosen president of the New London Northern Railroad Company, a part of the Grand Trunk system, resigning in 1907. In the latter year he was appointed United States circuit judge for the second circuit by President Roosevelt.

Perhaps the most important opinions written by Judge Noyes in the circuit court of appeals were those delivered in the Selden, the Calcium Carbide, and the Teleseme-telephone patent cases; the Pennsylvania Sugar Refining case; the American Banana Company case; the case of the South African Steamship Conference; the Yerkes Estate case, and the Roth and Appel and McIntyre bankruptcy cases.

Among the important opinions prepared by him in the circuit court are those pronounced in the Milling-in-Transit case; the Patten Cotton Corner cases; the Yacht tax cases, and the case of the American Tobacco Company, all four circuit judges writing opinions in the latter case.

In 1909 and 1910 he was a representative of the United States at the third international conference on maritime law, held at Brussels, and participated in the negotiation of two treaties.

Judge Noyes is the author of a work on the "Law of Intercorporate Relations," now in its 2d edition, and of "American Railroad Rates."

Resignation of Judge Anderson.

HONORABLE W. D. Anderson, of Tupelo, Mississippi, associate justice of the supreme court of that state, recently resigned, and will resume the practice of the law. During his brief incumbency of the office, Judge Anderson delivered some very able opinions, and had he remained on the bench would have inevitably taken high rank as a judge.

Death of Prominent Railroad Attorney.

Carroll Wright, of Des Moines, Iowa, died at Colorado Springs, Colorado, on October 28th.

Mr. Wright was general attorney for the Rock Island Railroad for Iowa, Minnesota, North and South Dakota, since 1896, and for twenty-five years was identified with the Rock Island lines.

U. S. Circuit Judge, Eighth Circuit

HONORABLE Elmer B. Adams was born at Pomfret, Vermont, on October 27, 1842. He studied at Yale, graduating from that institution in 1865. He went to Georgia under the auspices of the American Union Commission, and inaugurated a system of free schools for white children at Atlanta and Milledgeville. Returning to Vermont in 1866 he studied law there and at Harvard Law School. He was admitted to the Vermont bar in 1868, and in the same year began practice at St. Louis, Missouri. He was appointed judge of the circuit court there and served from 1879 to 1885, but declined reelection and resumed practice. From 1895 to 1905 he served as United States district judge for the eastern district of Missouri. In the latter year he was appointed United States circuit judge for the eighth circuit, which position he still occupies. He is now acting as presiding judge of the circuit court of appeals within his circuit.

HON. ELMER B. ADAMS

Judge Adams is a special lecturer at the University of Missouri upon the law of succession and wills. He is also interested in the question of international peace, being a director of the American Peace and Arbitration League.

Death of Judge Fenner.

The death at his home in New Orleans on October 24th of Honorable Charles E. Fenner deprives Louisiana of one of its foremost citizens, one prominent in many circles of public and private importance.

He was a native of Jackson, Tennessee, born in 1834, but in his early youth he came with his parents to New Orleans, where the greater part of his life was spent. Educated at the Kentucky Military Institute and at the University of Virginia, he entered the practice of law, but the war between the sections of the Union breaking out, he entered the Confederate service in the artillery and became the captain of a battery which rendered great service and gained deserved fame in that great body of Confederate forces known as the Army of Tennessee.

At the close of the war he returned to New Orleans and took up the practice of his profession, in which he became distinguished. In 1880 he was appointed a justice of the supreme court of Louisiana, resigning after a continuous service of fourteen years to become president of the board of administrators of Tulane University, a position from which he only retired a few years ago. Judge Fenner was identified with many benevolent and charitable enterprises, and, while taking no active part in politics, exerted himself always in behalf of the public good. For several years past his health had been declining, and the end came peacefully at his home surrounded by his family and intimate friends.

Texas Judge Dies.

Judge T. W. Moore of the twenty-second judicial district, composed of the counties of Fayette, Caldwell, Austin, Comal, and Hayes, died at La Grange, Texas, on October 29th.

Hon. Harvey M. Trimble

Illinois Circuit Judge, Newly Elected Commander in Chief of the Grand Army of the Republic

HONORABLE Harvey M. Trimble was born in Clinton County, Ohio, on January 27th, 1842. He came to Bureau county, Illinois, in 1843. He was educated in the common schools and at Eureka College, at Eureka, Illinois.

Judge Trimble served during the Rebellion from August 21, 1862, to the close of the war. He enlisted as a private in Company K, 93d Illinois Volunteer Infantry, which was organized in September and assigned to the army of the Tennessee. Upon the organization of the regiment, he was elected sergeant major, and in April, 1864, was promoted to adjutant. In March, 1865, he was detached to serve as assistant adjutant general of the third brigade, third division 15th army corps.

He participated in the battles of Jackson and Champion's Hill, Mississippi, and in the seige of Vicksburg, Mississippi, as well as in the battles of Missionary Ridge, and Allatoona, and was with Sherman in his celebrated march to the sea. He took part in the battle of Savannah, Georgia, and in General Sherman's campaign through the Carolinas. He participated at Washington in the grand review of the Union Army on May 24, 1865; was mustered out of service at Louisville, Kentucky, on the 23d day of June 1865, and was finally paid off and discharged at Chicago, July 6th, 1865.

Judge Trimble was made Commander in Chief of the Grand Army of the Republic on August 25th, 1911, by the unanimous vote of the National Encampment at Rochester, New York. Probably no honor that could be conferred upon Judge Trimble would be more highly appreciated by him than this mark of confidence and esteem from his comrades who wore the blue.

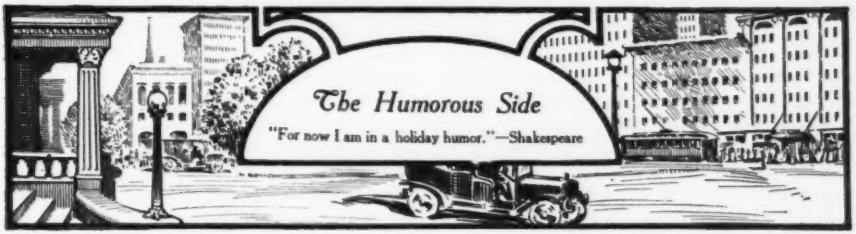
HON. HARVEY M. TRIMBLE

Returning to Princeton, Illinois, after the war, he was appointed deputy clerk of the circuit court of Bureau county, and was admitted to the bar in November, 1867. Later he served nine years as master in chancery. He was made county judge in 1877, and three times re-elected. He was chosen president of the Bureau County Soldiers Association at the time of its organization, on July 8th, 1896, and re-elected. He became commander of the Ferris Post No. 309, G. A. R. December 9th, 1896, and was elected department commander in 1902. On June 7th, 1897, he was elected circuit judge in the 13th judicial circuit. He was appointed as a member of the Illinois Vicksburg Military Park Commission by Governor Yates, and subsequently reappointed by Governor Deneen.

DEATH OF OKLAHOMA LAWYER

Edgar Smith, of the law firm of Zevely, Givens, & Smith, of Muskogee, Oklahoma, and for years known as one of the most able lawyers in the southwest, died in that city on October 29th.

Mr. Smith had lived in Muskogee since 1905, having moved there from Vinita, Oklahoma, where he formerly practised.



A Model City. "I propose to make this a model city," said the reformer.

"It's that now," replied the motorist, "only it's about an 1897 model."

Merely Suspected. The stranger: "Is there a good criminal lawyer in your town?"

The native: "Wall, everybody thinks we've got one, but they ain't been able to prove it on him."—Cleveland Plain Dealer.

Legal Aviation. A young lawyer was making his first effort before a judge who was a noted wag. He had thrown himself on the wings of imagination into the seventh heaven, and was preparing for a higher ascent, when the judge interrupted the astonished orator to remark: "Hold on, my dear sir, don't go any higher, you are already out of the jurisdiction of this court."

A Reflection. An overbearing barrister, endeavoring to brow-beat a witness, told him he could plainly see a rogue in his face. "I never knew till now," said the witness, "that my face was a looking-glass."

Cutting. A barrister, cross-examining a witness who had a very red nose, asked: "Are you addicted to drink?" and the witness indignantly replied: "That is my business." "Ah!" said the barrister, "is it your only business?"—Sheffield Telegram.

Unlucky. "That was rough on Davis."

"What?"

"He stepped on a piece of orange peel, fell, and was arrested for giving a street performance without a license."—Ideas.

First-Rate Record. Judge—"You are charged with nonsupport of your wife. What have you to say for yourself?"

Rastus—"Well, jedge, I done got her three more washings a week than any other cullud lady in the block."—Toledo Blade.

Right of Private Opinion. The humorous side of the law has been enriched by the statement of the supreme court of Illinois, in the recent case of Hutchinson v. Hutchinson, 250 Ill. 170, that "it is not evidence of insanity to disagree with the judgment of a court."

More Decisions Wanted. "There's only one way to make aviation safe," said the man who loves legal formalities.

"What's that?"

"Get some good attorney to prove that the law of gravitation is unconstitutional."—Washington Star.

Perfectly Frank. "I've listened to many divorce cases," said a Louisville judge, "but never have I heard such an all embracing appeal for separation as that Virginia darky gave before the county justice in Virginia."

"Why, Sally," said the justice, "what are you doing here?"

"Well, jedge, I wants a divorce."

"You want a divorce, Sally! Why I thought Bill was a good nigger. Ain't he good to you?"

"Oh, ya-as, jedge; Bill ain't never hit me a lick in his life."

"Well, doesn't he support you?"

"Ya-as, sir, he give me 60 cents last Saddy night!"

"Well, what in the world is the matter with you then?"

"Jedge," said Sally, in confidential tones, "to tell de truf, I jes' los' my taste for Bill."

Who Was Waiting. Former Associate Justice of the Supreme Court Shiras is set in his views about the sphere of woman, says the Saturday Evening Post. Mrs. Shiras is a devotee of whist, and was at one time a member of a whist club that met on several evenings each week.

After a club meeting Mrs. Shiras asked one of the club members to drive home with her in her carriage. When they came to the Shiras home the escort stepped to the door with Mrs. Shiras.

The justice opened the door himself in answer to the ringing of the bell, but as the hall was dark it was not certain who was in the hall way.

"Is that you, Mr. Justice?" asked the person who had driven home with Mrs. Shiras.

"Yes," he replied, "this is the old man waiting for the new woman."

Story Had Lost Charm. A story is being told at the expense of an old Yorkshire farmer, who was recently called upon to explain why he had failed to take out a licenes for a favorite fox terrier dog, says P. I. P.

"'Ee's nobbut a puppy," the defendant remarked, in response to a question as to the animal's age.

"Yes, yes! So you say. But how old is he?"

"Oh, well, I couldn't tell to a bit," was the reply. "I never was much good at remembering dates, but 'e's nobbut a puppy."

On the other hand it was maintained that the animal in question was a very, very old-fashioned puppy, and the magistrate inflicted the usual fine.

Shortly afterward the farmer was met by a friend, who wanted to know how he had fared at the police court.

"Nobbut middlin'!" was the reply.

"Did they fine you?"

"Yes," responded the victim; "an' 'ang me if I can understand it! Last year, an' the year afore that, I told the same tale about the same dog, an' it wor allus good enough afore! Who's been tamperin' wi' the laws sin' last year?"

The Other Good-For-Nothing. In a little sequestered country town, where the court of justice is over the general store and where the judge is an old, grizzled farmer, thoroughly familiar with pitching hay and milking cows, but having a very limited knowledge of the law, the prisoner had pleaded "not guilty" to a charge of burglary. The lawyer for the prosecution was endeavoring to show the court that the accused was a man of low character.

"What were you doing the night before the robbery?" he questioned severely.

"I was playin' pinochle with Jed Parker and another feller," answered the prisoner evasively.

"Ah, I thought so!" shouted the lawyer triumphantly. "Playing cards, and with that loafer Jed Parker! Gambling and in bad company! But you mention a third party, sir. Who was the other good-for-nothing?"

The prisoner hesitated.

"Answer me!" bellowed the lawyer.

"Wa-al, sir, if ye must know," said the accused, "it was the judge here."—Judge's Library.

"Not Guilty." "Down in Texas by the Rio Grande, where I used to live and in the village which I graced with my presence," said the Old Timer, "a certain old horse doctor was elected justice of the peace. What he didn't know about the law was sufficient.

"His first case was that of a man arrested for stealing a horse.

"'Guilty or not guilty?' asked the justice.

"'Not guilty,' answered the prisoner.

"'Then what the deuce are you doing here?' demanded the justice of the peace. 'Get out!'"—San Francisco Chronicle.

Sad Visitation. A corporation lawyer returned to his native village and erected a marble palace on a hilltop there. One day, after the palace was completed, he said to the postmaster and the crowd of loiterers in the general store:

"'Boys, my million-dollar house up on the hill is simply full of Titians.'

"The loiterers exchanged looks of surprise and horror, and the postmaster exclaimed:

"'Good gracious, ain't there no way o' killin' 'em?'"